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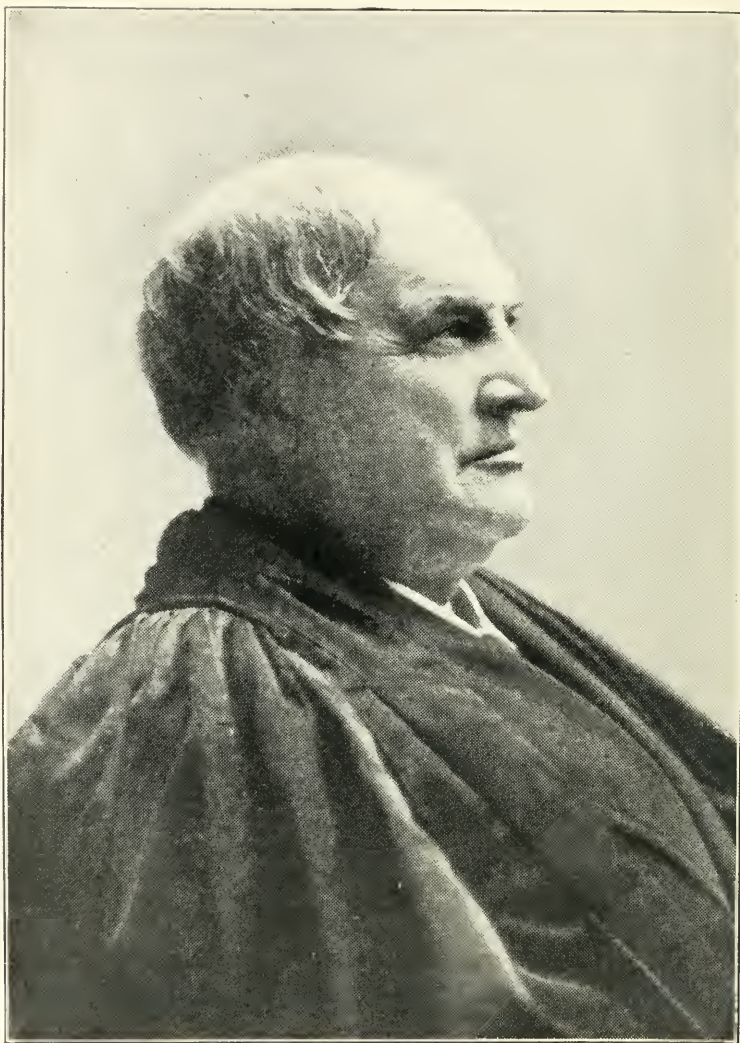
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S. F. MILLER

CYCLOPEDIA OF LAW

Constitutional Law

FEDERAL AND STATE

BEING

A CLEAR AND COMPLETE ANALYSIS OF THE CON-
STITUTION, TOGETHER WITH A SUMMARY OF
THE LEADING DECISIONS AND BASIC PRIN-
CIPLES WHICH GO TO MAKE UP THE
FUNDAMENTAL LAW OF THE
STATE AND NATION

VOL. II

EDITOR IN CHIEF

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Assisted By

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PREFACE.

This treatise has been prepared as a handbook for the use of students-at-law, and for that great class of citizens who, in fitting themselves for intelligent voting, are willing to make a brief study of political and legal science. It aims to present in plain and concise form the fundamental law of the State and Nation, together with the rules and decisions which have accumulated in the construction and application of constitutional provisions.

It is believed that a consideration of constitutional principles should come first in the study of American law. The Constitution in our system is the supreme and fundamental as well as the more general law of the land, and its principles form a fitting base upon which to begin the structure of a legal education. On account of the breadth of the subject, a number of writers have taken occasion to treat concurrently with it, subjects, which are planned to be treated separately in the *Cyclopedia of Law*. To avoid repetition, we have not entered upon a consideration at length of

any branch that is to be presented in a subsequent number of this series.

Recognizing, as we do, that it is not the province of the law-writer to make the law, yet in a few instances we have felt it our duty to call attention in the footnotes to certain changes and improvements that should be made in our political system, and to criticise, where criticism seemed necessary, those errors and fallacies that have crept into judicial and legislative action.

The purpose of law is to apply justice. In establishing and interpreting law, man exercises a God-like function. When the law is honestly made and administered its precepts will tend to approach and to conform to the highest and truest principles of right cherished by all good men. Any law which does not satisfy justice and conform to these principles is *prima facie* a bad law; and it becomes the right and duty of every citizen to oppose with his vote the continuance of such unjust law.

A study of law in this sense—as principles of justice and right—must ever prove the most beneficent of educative influences.

CHARLES E. CHADMAN.

ABBREVIATIONS USED IN CITING AUTHORITIES.

Am.—American.
Ante.—Before.
Art.—Article.
Bl. Com.—Blackstone's Commentaries.
Blatchf.—Blatchford's U. S. Circuit Court Reports.
Cent.—Century.
Ch.—Chapter, Chief.
Const.—Constitution, or Constitutional.
Com.—Commentaries.
Com. Com.—Commerce Commission.
Con.—Congress, or Congressional.
Co.—Company.
Dall.—Dallas' U. S. Supreme Court Reports.
Dict.—Dictionary.
Ed.—Edition.
Et seq.—Et sequitur (and the following).
El. & B.—Ellis & Blackburn, English Reports.
Fla.—Florida Reports.
Fed.—Federal Reports.
Ga.—Georgia Reports.
Gov.—Government.
Hist.—History.
How.—Howard's United States Supreme Court Reports.
Idem.—The same.
Ill.—Illinois Reports.
Ind.—Indiana Reports.
Jour.—Journal.
La. Ann.—Louisiana Annual Reports.
Mass.—Massachusetts Reports.

Mod.—Modern's English Reports.
Mo.—Missouri Reports.
N.—Note.
N. E. Rep.—North Eastern Reporter.
No.—Number, North.
N. J.—New Jersey Reports.
N. S.—New Series.
N. Y.—New York Reports.
Pa. St.—Pennsylvania State Reports.
Pet.—Peters' U. S. Supreme Court Reports.
Prin.—Principles.
Q. v.—Quod vide (which see).
Q. B.—Queen's Bench Reports.
Reg.—Register.
Rev.—Revised, Review.
Sawy.—Sawyer's U. S. Circuit Court Reports.
Sec.—Section.
Secs.—Sections.
St.—State.
Stat.—Statutes.
U. S.—United States, United States Reports.
V., or vs.—Versus (against).
Vol.—Volume.
Wall.—Wallace's U. S. Supreme Court Reports.
Wheat.—Wheaton's U. S. Supreme Court Reports.
Wash. C. C.—Washington's U. S. Circuit Court Reports.
Wis.—Wisconsin.

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FEDERAL CONSTITUTIONAL LAW.

CHAPTER I.

ORIGIN OF THE UNITED STATES.

Sec. 51.* PROSPECT AND RETROSPECT.—
Standing at the threshold of a new century we ask: What shall the years bring forth in social and political institutions? What new forces are to inspire and direct the American people? These questions we can only tentatively answer. But we need not blindly speculate on the causes which shaped the laws and moulded the institutions of the present. Turning to the past we see spread out before us as for review the interesting and novel spectacle of a world accidentally discovered, reclaimed from savage nations, repopulated and transformed into a great and powerful nation,—conglomerate in people and unified in government. Nothing in the long line of political development in the ages gone by compares with this Aladdin-like unfolding of the western world. A trackless continent inhabited only by savages, opened up, settled, civilized, popu-

*The first fifty sections will be found in Number I. of the Home Law School Series, entitled "How to Study Law."

lated and nationalized in the course of a few hundred years! The birth of a nation has taken place, and the new nation has turned back its products—material, social and political—to astonish and revolutionize the very nations of the Old World, whose transplanted sons developed the New.

These events, while recent, are of such transcendent importance as to warrant the most careful and assiduous attention and study. In the Charters and Constitutions of a free people; in the laws and decisions formulated under a democratic-republican government we may discover not only the causes of our present greatness, but also the principles which afford the true solution of our political and social problems. Volumes would be necessary to recount in detail the essential features of this transformation of an alien and heterogeneous people into a homogeneous nation with an expansive code of laws and morals and with well-defined and high ideals of government and natural justice. But it is the basic principles, and leading decisions, that the student of present laws and institutions needs to grasp, and these it is possible to present within a comparatively small compass.

Sec. 52. DISCOVERY.—The Northmen visited America as early as 1000 A. D., but their visits were transitory, and it was reserved for Columbus, while seeking by the advice of Toscanelli to prove that the world was round, and that by sailing west he could reach the east, to reveal in 1492 to the nations of Europe the vast territory of the New World, at first sup-

posed to be the coast of India. Columbus found the land occupied by an uncivilized people, who, living by hunting and fishing, were not considered to have an indefeasible title. He landed and planted the flag of Spain, declaring by this act that the land belonged to the Spanish throne by right of first discovery. Later this title by discovery was to be strengthened and confirmed by settlement, and the power of Spain over a portion of America fixed to continue until the last days of the nineteenth century.

Columbus' discovery thrilled Europe. The one thing left in the world that seemed worth doing had been accomplished. An escape from the confining pressure of conservatism was made possible, and the despair of the familiar and habitual gave place to the glad hope of a coming dawn that would emancipate and enlighten the human race.* The leading nations of Europe flocked to the new land to plant their flags and lay claim to the territory.

Sec. 53. DIVIDING THE SPOILS.—The occupancy of the Indians being considered too vague and undefined to be respected by the Europeans, the question was, not how to dispossess the Indians, but rather how to secure superior claims as against competing nations. The first international dispute in regard to the new territory was settled, as many matters were at that day, by the Pope. In 1494 Spain and Portugal, then leading maritime nations, made a compact sanctioned by Pope Alexander VI., by which all land west

*Julian Hawthorne, "History United States," I., 17.

of a line 370 leagues to the west of the Cape Verde Islands should belong to Spain, while all heathen coast east of such line should belong to Portugal. This compact, if recognized, would have excluded all other nations from the new world. England laid claim to all territory between the 56th and 38th degrees of north latitude, by virtue of the discovery and exploration of the coast by John Cabot in 1495, and began settlements in this territory during the latter part of the sixteenth century. France, though contented for nearly a century to fish off the coast of Newfoundland, also began settlements, and her king, Francis I., laughed at the claims of Spain and Portugal to the whole of the new continent. He urged that they were not the sole heirs of Father Adam, and if they were they should publish the will.*

England, France, Spain, Holland and Portugal each claimed portions of the American continent and proceeded to make good their claims by establishing settlements. A goodly portion of the early history of our country is taken up with the disputes between these different nations for supremacy. How England and France finally became superior in North America, Spain in Cuba, Central, and South America, and Portugal in Brazil, is recounted in every school history and need not be taken up here. The claim of France

*This argument of Francis I. was a valid one, and is similar to that urged by Herbert Spencer in "Social Statics," Ch. IX., against individual property in land. Spencer affirms that "the right of mankind at large to the earth's surface is still valid; all deeds, customs and laws notwithstanding."

to Louisiana was purchased by the United States in 1803, and all the vast territory west of the Mississippi became an integral part of our nation.—J. Fiske, "Hist. of the United States."

Sec. 54. THE ENGLISH COLONIES.—The first settlements in America were weak and had at first the semblance of camps of adventurers rather than of stable colonies. The earliest political organizations of the settlers, while to some extent haphazard and experimental, were so restrained and directed by the in-born political ideals of Englishmen as to fall within the trend of former development, and to correspond in general with the plans of the mother country to whom they owed allegiance. The British Crown from the first asserted its power to lay down the frame of government by which the colonists were to be ruled, but there was no uniformity in the exercise of this power. We recount briefly the political development of several of the colonies:

Virginia. In 1606 James I. granted the London and Plymouth companies—commercial and colonizing corporations—a charter to large tracts of land in America. The colonists were to be under the immediate control of a council composed of residents, but appointed by the king; this council was subordinate to another in England, and the latter under the control of the king. One-fifth of the precious metals produced was to go to the king, and a duty was laid on alien traffic. The emigrants and their children were permitted to retain the character of free English people. The company held the charter and under it governed the colony. The

people of Virginia were not satisfied with their rights under this charter, and demanded of the London Company the immemorial right of Englishmen to participate in the government. Since 1265, the date of the Simon de Montfort Parliament, the towns and counties in England had enjoyed a representation in the House of Commons, and this assembly had established the principle that it alone could vote the levy of taxes. The people of Virginia in 1619 established a local assembly in which eleven districts were represented by two members, or "burgesses," each, and this assembly from its first meeting, July 30, 1619, claimed the sole power of levying taxes. Among these burgesses was a man named Jefferson, and 157 years later one of his descendants drafted the Declaration of Independence. In 1624, King James annulled the charter of the company, and Virginia came directly under the Crown as a Royal Province. But the House of Burgesses continued to hold the purse and assert its power in local matters.

New England Colonies. The Pilgrim Fathers who landed at Plymouth on the 21st of November, 1620, had no charter, and their government for a considerable period may be called a voluntary association. In the cabin of the Mayflower they drew up a compact in which they agreed to make and to submit to such laws as were needed for the general good. In 1630 a number of Puritans started Massachusetts Bay Colony, under a charter from Charles I. Under their charter, which was an extremely liberal one for that time, they could make any laws they liked for themselves if not

in conflict with the laws of England. They were thus allowed to establish themselves in self-governing communities. The Puritan settlers came over in groups led by their ministers and settled in parishes or townships. Each of the settlements established a church and the inhabitants and congregation were identical. When they met for church purposes it was a parish meeting, and for civil purposes, as building roads, school houses, etc., it was called a town meeting. Thus were established the local self-governing communities which have continued to find favor in New England to the present time.

Sec. 55. SAME SUBJECT—FIRST WRITTEN CONSTITUTION IN AMERICA.—Connecticut, which was founded from the Massachusetts colonies as a protest against religious bigotry, affords the first instance in the history of the world of a State formed by a written constitution. In the Puritan settlements of Massachusetts only church members were allowed to vote. This restriction soon became oppressive, and Thomas Hooker, a liberal Puritan, headed the opposition. Hooker maintained that all the people should be participators in the common government; while Governor Winthrop asserted that a large part of the people were unfit to take any part in the government, and that the best and wisest church-members should conduct the government for the good of all. This is the first recorded contest between aristocracy and democracy in the New World. The battle was a draw. The democratic and liberal element withdrew west-

ward and left the conservatives in the old field.* Hooker and his followers journeyed into Connecticut and founded Hartford, Windsor, and Wethersfield. In 1639 the people of these three towns met at Hartford and agreed to govern themselves according to a written Constitution. By the Constitution there was no restriction of the suffrage to church members; the three towns were united into a republic; there was no mention of a king, and the people themselves were the only recognized political authority. In 1662 Connecticut received a liberal charter which, in substance, confirmed this constitution.

Sec. 56. SAME SUBJECT—THE NEW ENGLAND CONFEDERATION.—The first league, or confederation, between distinct American colonies was established in New England in 1643. The four colonies of Massachusetts, Plymouth, Connecticut and New Haven formed a league for the purpose of defense against the Indians. The confederation was called "The United Colonies of New England," and its affairs were managed by a board of eight commissioners.

*The founding of Connecticut strikingly illustrates the desire of liberalism and democracy to avoid, where possible, all contests with the conservative and reactionary element. As Jefferson wrote, in later years, "all experience hath shown that mankind are more disposed to suffer while evils are sufferable than to right themselves, etc.," the political history of America has proven. The democratic element have faced the frontier and conquered the wilderness rather than sacrifice their opinions. The East delights to honor the forms and customs of Europe, and looks backward rather than forward, while the West, with unlimited trust in democratic ideals, advances and adopt new methods for their fuller realization.

This board, composed of two members from each of the four colonies, had power to call out troops in defense of, and settle disputes between, the Colonies. The internal affairs of the Colonies were not disturbed by the league. This confederation existed for the purposes mentioned until 1684, when Sir Edmund Andros arrived to govern all of New England as a viceroy.—Fiske, "Hist. of the United States," Ch. vi.

Sec. 57. SAME SUBJECT—MARYLAND AND PENNSYLVANIA.—Examples of proprietary government are furnished by the colonies of Pennsylvania and Maryland. Charles I., in 1629, granted to Lord Baltimore the territory of Maryland. Baltimore was made "Lord Proprietary," with full power over the destiny of the colony upon rendering the king two Indian arrows yearly as homage, and a fifth part of the precious metals discovered. This office was hereditary and continued save for a brief interval until Independence. In the same manner William Penn was granted the territory of Pennsylvania by Charles II. Penn's power over the colony was not as plenary as that of Lord Baltimore. Laws passed by the assembly in Pennsylvania had to be sent to the king or privy council for approval, while Lord Baltimore alone signed laws passed in Maryland. In Maryland the right of the British government to impose taxes was denied, while in Pennsylvania it was expressly asserted in the grant.

Sec. 58. COLONIAL GOVERNMENTS.—In the thirteen colonies subject to England, and from

which the United States of America was to be formed, a variety of governments existed prior to the formation of the American Union. The following three forms obtained at the time of the Revolution:

Provincial Government. Under this system the colony was regarded as a direct appanage of the Crown. A governor was appointed by the king to be the executive head of the colony, with the right to veto local legislation and the power to appoint judges and establish courts. A council appointed by the king acted as the upper house of the local legislature, while an assembly of representatives chosen by the people constituted the lower house. This form of government prevailed with modifications in Virginia, North Carolina, South Carolina, Georgia, New Hampshire, New York and New Jersey.

Charter Government. A charter is a written instrument formally expressed and executed and given as evidence of a grant or contract. The king had in a number of instances laid down the frame of government for a colony by a charter or grant, which invested the inhabitants with certain general powers of local self-government. Massachusetts, Rhode Island and Connecticut had charter governments. In Massachusetts the king appointed the governor; but in Rhode Island and Connecticut the charter allowed the people to elect their governor, council, and assembly, and appoint other officers.—Black, Const. Law, 34-35.

Proprietary Government. In several colonies the executive power had been bestowed by the king upon individuals, who held the territory upon the condition

of making certain slight returns to the Crown in token of the over-lordship retained by the king. Maryland, Pennsylvania and Delaware were proprietary governments.

Under each of these forms of government the colonists laid claim to the rights of British subjects and to the protection of the common law. They enjoyed quite generally the privilege of local self-government and the right of voting the taxes; and their assemblies,—modeled after the House of Commons,—reasserted all the immunities against royal oppression gained by the centuries of struggle in England.

Sec. 59. GROUNDS OF DISPUTE WITH THE MOTHER COUNTRY.—The Colonies admitted that they were a portion of the British dominions, and conceded that they were subject to the control of the Crown and Parliament in all matters of imperial concern, under which head fell foreign affairs and commerce with the mother country and other nations. But they felt that they had the right to self-government in matters which concerned themselves solely. They asserted, as their forefathers had done, the right to be taxed only when their representatives voted the tax. These claims the Crown and Parliament were not ready to concede, and later, when repealing the Stamp Act, Parliament laid claim to the unqualified authority to bind the Colonies by legislation in all cases whatsoever.—I. Story, Const., Secs. 159-197.

Furthermore, England pursued a policy of oppression toward the Colonies in regarding them as dependent plantations to be systematically robbed for the

benefit of the mother country. Acting on the presumption that in trading one or the other party must get the best of the bargain, Parliament legislated to worst the Colonies. The colonists were prohibited from manufacturing; they could only buy from or sell to the mother country; their carrying trade was limited to British ships, and a prohibitory tariff had been put upon American corn, to protect the British landlords and farmers.

Sec. 60. ATTEMPT AT A FEDERAL UNION. —Up to this time no attempt had been made to weld together the group of English colonies in America. The first plan of Union was formulated by that far-seeing and versatile genius, Benjamin Franklin. The expensive campaigns which had been conducted against the French and Indians revealed the need of some central power, with the right to enlist troops and levy taxes for the support of a common enterprise. In 1754 seven Colonies sent delegates to a Congress at Albany to secure the aid of the Indians; Franklin was present and proposed a plan of Union for the Colonies, since known as the "Albany Plan." By his plan the Colonies were to elect a Grand Council, to meet once a year at Philadelphia, the Council to have power to levy taxes, support armies, and be supreme in all matters of general concern. The executive of the united Colonies was to be a President appointed by the Crown, and to have the veto power. The plan was never adopted, as the Colonies were jealous of one another and not ready for union, and the king was averse to having them unite.—I. Kent Com., 204-5.

Sec. 61. TAXATION WITHOUT REPRESENTATION.—England insisted that the Colonies directly assist in paying the expense which she had incurred in defending them. A stamp tax was considered the least liable to objection, and the Stamp Act was passed by Parliament in 1765. The tax was not oppressive, but it was levied contrary to the fundamental political tenets of Englishmen and on principle the Colonists resisted. They were not represented in the English Parliament and for that body to tax them in any way would be “taxation without representation.” Further the people of America did not wish to contribute to the support of a foreign army, and one that might be used against them as well as for them. The patriotic eloquence of Adams and Henry was loosened against the Stamp Act, and a storm of indignation followed.

Sec. 62. THE COLONIES LEARN TO CO-OPERATE.—As a result of the anti-stamp tax agitation a Colonial Congress was called in 1765. It met in New York City, October 7th. Nine Colonies were represented by twenty-eight delegates. The Congress agreed upon a declaration of rights and a statement of their grievances. They claimed the right to be free from all taxes not laid down by their own representatives. This statement was sent to England as a joint protest against the Stamp Act. Thus the Colonists had been compelled to adopt Franklin’s sage advice, “unite or die.”

Sec. 63. THE COLONIES FORCED TO RESIST.—The Stamp Act was repealed in 1766, as re-

sistance had rendered it abortive, but Parliament did not disclaim the right to tax the Colonies. There was a party in England that sympathized with America in her resistance to internal taxation, such as the Stamp Act authorized. The leaders in Parliament proposed to lay import duties on tea and other articles, since the Colonies as yet had not objected to the regulation of imports and external taxation. But as Parliament intended to use the money raised by import duties to pay the salaries of judges, governors and other representatives of the Crown and thus make them independent of the Colonial legislatures for grants, the plan was as objectionable to Americans as the Stamp Act had been. The people pledged themselves not to import dutiable articles. Disputes were constantly occurring between the Colonial legislatures and the Royal governors; in Virginia, the Assembly dismissed by the governor met in the dance hall of the Raleigh Tavern at Williamsburg. The British troops in Boston in 1770 fired on a crowd of people and killed and wounded a number. Parliament in 1772 took off all duties save that on tea; this was reserved to maintain the right to tax the Colonists, but as it was this asserted right that the Colonists objected to, the tea ships were unloaded into Boston harbor. The port of Boston was closed by act of Parliament in April, 1774. The Colonies were to be forced to pay taxes. The charter of Massachusetts was annulled and a military governor was appointed.

Sec. 64. SAME SUBJECT—THE FIRST CONTINENTAL CONGRESS.—Such was the condition of affairs with the mother country when the delegates

who had been elected in the several Colonies, on the advice of Massachusetts, came together in Philadelphia, September 5, 1774. They were to consult together and frame a common protest against the action of England, and draw up a declaration of rights, setting forth to the king their attitude and demands. This meeting, known as the Continental Congress, was the first practical step toward uniting the Colonies in a revolutionary league. While many of the delegates believed that it was too late to gain their demands save by war, their action was reserved and dignified.* A declaration of rights was sent to England, suspension of commercial intercourse with the mother country was recommended, and, agreeing upon another Congress to meet in May of the following year, they adjourned.

Sec. 65. SECOND CONTINENTAL CONGRESS.—The second Congress met in May, as agreed upon, and its work was now reasonably clear. The skirmish at Lexington and Concord had occurred and

*This Congress appealed to England thus: "To your justice we appeal. You have been told that we are impatient of government and desirous of independence. These are calumnies. Permit us to be as free as yourselves, and we shall ever esteem a union with you to be our greatest glory and our greatest happiness. But if you are determined that your ministers shall wantonly sport with the rights of mankind; if neither the voice of justice, the dictates of law, the principles of the constitution, or the suggestions of humanity, can restrain your hands from shedding human blood in such an impious cause, we must then tell you that we shall never submit to be hewers of wood and drawers of water for any ministry or nation in the world." See Julian Hawthorne, *History United States*, Ch. XIII.

the revolution had begun. Congress chose John Hancock as its president, took charge of the force besieging the British in Boston, and appointed Washington as commander-in-chief of the "Continental army." At all times prior to this the Colonists acknowledged themselves as subject to the British government, and simply claimed the right which the constitution of England guaranteed to them as Englishmen. The individual Colonies were jealous of one another, and had looked with disfavor on attempts at union. So far they had co-operated because their circumstances compelled them to do so, as their interests in the dispute with England were identical. The Second Continental Congress, which met in Philadelphia, May 10, 1775, made no attempt to define the relation which it held to the separate Colonies. The Colonies were all represented in it, and the vote was by Colonies, but there was no compact made by which to determine the sphere of its powers. The delegates of the Colonies simply took charge of the common cause against England by tacit or implied authority. The body was a revolutionary one, and the Colonies were co-operating rather than uniting.—Walker, *Am. Law*, 35; Cooley, *Principles Const. Law*, 3d ed., p. 9.

Sec. 66. THE DECLARATION OF INDEPENDENCE.—Bunker Hill had been fought and yet many Americans hoped for reconciliation with England on the basis of securing their rights. But the persistence of the king strengthened the sentiment in favor of Independence. Several of the Colonies drove out their royal governors and set up new State gov-

ernments. For a year the war had been carried on, and the Colonists were simply belligerents against their acknowledged government. On the 7th of June, 1776, Richard Henry Lee presented a resolution in Congress that the "United Colonies are, and ought to be, free and independent States; that they are absolved from all allegiance to the British crown, and that all political connection between them and the state of Great Britain is, and ought to be, totally dissolved." The vote was postponed for three weeks and a committee appointed to prepare the declaration. Adams, Franklin and Jefferson were members of this committee, and the latter was made chairman and drafted the Declaration of Independence. On July 2d the Colonies unanimously adopted the resolution, and on July 4th the Declaration which had been drawn up to justify their action before the world, was signed by the delegates, and the Colonies became independent States.

There is some dispute as to the effect of the Declaration in transferring sovereignty to the individual Colonies or States. Some writers assert that the States were never free and independent in the full and proper sense of the term, as they were leagued together from the first in some form.—Von Holst, *Const. Law*, 7. While others affirm that the Declaration gave the Colonies the "position of independent States, limited only by the concessions of authority, mostly tacit, which they made to their general Congress."—Cooley, *"Principles,"* pp. 3-4. Prior to declaring their Independence the Colonies were subject to England. The Declaration did not change their relation to one another, but did assert

that, "as free and independent States, they have full power to levy war, conclude peace, contract alliances, establish commerce, and do all other acts and things which independent States may of right do." There had been no formal union between the Colonies, and perpetual confederation had not been mentioned as yet, and hardly to be implied from their co-operation in resisting England.—Walker, *Am. Law*, 36.

Sec. 67. THE DECLARATION AS FUNDAMENTAL LAW.—The Declaration of Independence was an authoritative public act expressing the unanimous opinion of the various States as to the true nature of government. As a statement of the rights of the sovereign people against established government of whatever kind it has never been controverted or set aside. Just what effect the Declaration has under the Constitution is another matter. Many think its assertions too broad to be applicable. The declared equality has been limited to political equality, and with this restraint Americans have lauded as the mainstay of their liberties the clause reading—

We hold these truths to be self-evident—that all men are created equal, that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness. That to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it, and to institute a new government, laying its foundation on such principles and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness.

This instrument, as drawn by Jefferson, was not a

mere excuse for the act of rebelling against Great Britain. It was the heartfelt conviction of the signers of the Declaration—each an earnest student of human institutions and rights—that they were stating their just claims;—claims that would stand for all people and in all times. Hence the Declaration will always have an important bearing upon our political and constitutional history. It may be regarded as the fundamental law of America as to the relation between the sovereign people and their established government.

Sec. 68. THE ARTICLES OF CONFEDERATION.—Since 1774 the Colonies had been working together; they had declared their independence, raised, equipped and directed armies to sustain their rights, but it was not until 1777 that they decided to define the nature of their connection and declare it perpetual. The Colonies had been jealous of one another, the war had united them to a considerable extent, and the exigencies of their situation impelled them to unite in perpetuity. That their jealousies had not all been forgotten and their desire for union not fully developed is manifest from the character of the compact and the incompleteness of the league formed. On the 15th of November, 1777, the Continental Congress, after considerable discussion, agreed upon a series of "Articles of Confederation and Perpetual Union." These Articles were recommended by Congress to the States for ratification, and were immediately accepted by a majority of the States. This was the first express compact between the States and marks the constitutional birth of the United States as a Nation. The Articles

of Confederation were not ratified by all the States until the 1st of March, 1781. The cause of the delay was the unwillingness of some of the States to part with their western lands. In 1781 this land was ceded to the United States for the good of all the States, and the obstacle was removed.—I. Story, Const., Secs. 226-8.

Sec. 69. SAME SUBJECT—A LEAGUE OF STATES.—The Articles of Confederation formed a league between otherwise independent States. They expressly declared that "Each State retains its sovereignty, freedom, and independence, and every power, jurisdiction, and right which is not by this Confederation expressly delegated to the United States in Congress assembled." The purposes of the league between the States was "the common defense, the security of their liberties, and their mutual and general welfare." The States bound themselves to assist each other "against all force offered to, or attacks made upon them, or any of them, on account of religion, sovereignty, trade, or any other pretence whatever." The legislative body of the leagued States was an annual Congress of delegates, in which each State was represented equally, each having one vote, and the power to recall their delegates during the year and send others. The only executive provided for was "a committee of the States," consisting of one delegate from each State, to be appointed by and to sit during the recess of Congress. This committee was authorized "to execute such of the powers of Congress as the United States in Congress assembled, by the con-

sent of nine States, shall, from time to time, think expedient to vest them with."

The Articles extended to "the United States in Congress assembled" the power over war, treaties and alliances; authorized the Congress to send and receive ambassadors, establish courts for the trial of felonies and piracies committed on the high seas, make rule for prizes and captures on land, and grant letters of marque and reprisal. Congress had the further power to fix the standard of weights and measures, regulate the alloy and value of coin struck, emit bills of credit and borrow money on the credit of the United States, establish and regulate postoffices, appoint superior officers in the army and navy, make rules for the government of the land and naval forces, and direct their operations, to regulate trade and manage affairs with the Indians, and to act as the last resort on appeal in all disputes and differences between the States on questions of boundary, jurisdiction, or other cause whatsoever.

The important powers granted to Congress were not to be exercised unless nine States assented to the proposed action of Congress. It was further provided that all expenses incurred for the common defense and general welfare were to be defrayed out of a common treasury, to be supplied by the several States, "in proportion to the value of all land within each State granted to or surveyed for any person, as such land and buildings and improvements thereon shall be estimated, according to such mode as the United States in Congress assembled shall from time to time direct.

The taxes for paying that proportion shall be laid and levied by the authority and direction of the legislatures of the several States within the time agreed upon by the United States in Congress assembled." The Articles were to be inviolably observed by the States, and the Union was to be perpetual. Alterations were to be agreed to in Congress and confirmed by the legislatures of every State.—Cooley, "Principles," 3d ed., pp. 13-14.

Sec. 70. DEFECTS OF THE CONFEDERATION.—The Articles of Confederation were not satisfactory in uniting the States for their common welfare. Discord and jealousy between the separate States soon weakened the league and made the authority of the "United States in Congress assembled" almost nugatory. The small States could antagonize the larger ones. Congress without revenue or the power to levy taxes could but call upon the States for supplies, and had no power to coerce payment. Without power over commerce and trade, or an executive to enforce its judicial decisions, the central government rapidly lost prestige and significance. Congress could legislate and enter into treaties and alliances, but the States and the people could disregard them with impunity; it was intended as a government, but in practice became an advisory body, as its decrees could be made effective only through the action of sovereign States. It was made apparent that to secure harmony between the States, a central authority must be provided, with power within itself, derived from the sovereign people of all the States, to regulate all matters

of general importance.—Federalist, Nos. 15-22; Von Holst, Const. Law, 12. The Confederation proved that unless the powers granted to the general government were self-executing they would be of little avail, as the States, if permitted to exercise an option of obeying or not, were not to be depended upon.—Pomeroy, Const. Law, Secs. 57-75.

Sec. 71. EFFORTS TO PERFECT THE UNION.—The need of reform in the Articles of Confederation was apparent during the war, and before the last State had sanctioned them. The New England States and New York met in convention at Hartford in November, 1780, to devise means of improving the Federal finances. They issued an address to the States in which they suggested the power of the central government to coerce the States.* It was six years before a similar convention met, but in the meantime the States and the people had realized the necessity of an effective legal consolidation, if peace and freedom were to be enjoyed.—Von Holst, Const. Law, 13-14.

Sec. 72. SAME SUBJECT—THE ANNAPOLIS CONVENTION.—At the instance of Virginia a call had been made for delegates from the States to establish a better system of commercial regulations. Only six States sent commissioners. They met at Annap-

*A Convention of the New England States held in Boston, August, 1780, declared for a more solid and permanent union under one supreme head, and "a Congress competent for the government of all those national affairs which do not nor cannot come within the jurisdiction of the separate States."

olis in September, 1786, and after discussing the critical condition of affairs they recommended the calling of a general convention for the purpose of amending the Articles of Confederation. Congress later passed a similar resolution, and the convention was called to meet in May, 1787.

Sec. 73. SAME SUBJECT—THE CONSTITUTIONAL CONVENTION.—In pursuance of the call, all the States sent delegates to the convention save Rhode Island. This State enjoyed, by reason of her situation, peculiar commercial advantages under the Confederation, and she feared that the changes proposed would cause her to lose them. The delegates had been appointed by the several State legislatures, and under the resolution which called them together were to "report alterations and provisions" for reforming the Articles of Confederation. The Convention met in Philadelphia, May 14, but it was the 25th of May before the formal organization, by the election of Washington as presiding officer, had taken place. Upon consideration the Convention decided that the Articles were too faulty to be amended; but as specially assembled delegates from the various States they assumed authority to frame an entirely new plan of federal Union, and to recommend the same to the several States for adoption. Strictly considered it was a revolutionary proceeding; the delegates had exceeded their authority, and the plan of government proposed by them provided that "The ratification of the conventions of nine States shall be sufficient for the establishment of this Constitution between the States so rati-

fyiing the same," a provision contrary to the stated method of altering the Articles of Confederation.—Cooley, "Principles," 15; Von Holst, Const. Law, 17. Regardless of the existing law the Convention did its duty, and adopted a plan of union which, avoiding the errors of the past, sought also to meet the exigencies of their then situation. It is the work of this Convention which we are to study as the fundamental law of our political organization.

Sec. 74. THE CONSTITUTION RATIFIED BY THE PEOPLE OF THE STATES.—The work of the Constitutional Convention was completed September 17th, 1787. The Constitution was submitted to Congress and by it given to the several States for ratification. It was ratified, as recommended, by conventions of delegates chosen by the people in each State. Within a year eleven of the States had so ratified the Constitution, and in September, 1788, Congress made provision for an election and fixed the date of the inauguration of the new government for the 4th of March, 1789, though it was not until the 30th of April, 1789, that President Washington was inaugurated. North Carolina did not ratify the Constitution until November, 1789, and Rhode Island not until May, 1790.

Sec. 75. AMENDMENTS.—The Constitution provides the method by which it may be amended. Strong opposition was made by several States to ratifying the Constitution because it contained no bill of rights, or statement of individual immunities from governmental oppression. It was ratified with the expect-

tation that these would be added by amendments. The first ten articles or amendments contain this bill of rights, and were proposed by the first Congress and ratified by eleven States before the close of the year 1791. The eleventh article limits the judicial power, the twelfth changed the method of electing the President and Vice President, while the last three amendments were made necessary by the civil war. It is to be observed that the restrictions imposed by the Constitution and the amendments thereto, apply only to the government of the Union, and not to the State governments unless they are expressly mentioned.—Cooley, "Principles," 18.*

*Among the many valuable authorities on the formation of the Constitution and its interpretation are the writings of Hamilton, Madison and Jay in the "Federalist," and Elliot's five volumes, entitled "Debates in the State Conventions."

CHAPTER II.

DEFINITIONS AND FUNDAMENTAL PRINCIPLES.

Sec. 76. SOVEREIGNTY.—Sovereignty is defined as the supreme, absolute and uncontrollable power by which a State or nation is governed. It is the absolute right to govern and is always the final and only source of governmental authority. The sovereignty is the same whether embodied in a republican or a monarchical form of government, since it is the power and not the persons who possess it or those who exercise it. Under a republican form of government the will of the people is recognized as the sovereignty or supreme power. Every State possesses sovereignty, and, possessing it, a State is, in the largest sense, independent of all other States, as this power is inconsistent with dependence.* Sovereignty is single and indivisible, as it could not be supreme and uncontrollable if capable of being divided and one portion pitted against another. But while sovereignty is indivisible it is claimed that the powers of sovereignty may be classified and some of them apportioned to the government of the United States to be exercised, while others are

*The word "State" as above used is synonymous with nation, and means an independent and sovereign political entity. It will also be used as designating a member of the Federal Union.

left with the States.**—Cooley, *Principles*, 3d ed., p. 21.

We have seen (No. 1, *How to Study Law*) that all positive laws, or laws set by man over man, emanate from the sovereign power. Under our system the State, by virtue of its sovereignty—the will of the people—is the source of all laws. Hence the establishment of a Constitution or fundamental law is an act of sovereignty.

Sec. 77. THE RESIDENCE OF SOVEREIGNTY.—The right of the people to establish their government and lay down the fundamental law was expressly asserted in the Declaration of Independence and upheld by the power of war, and it is, therefore, the leading principle of our constitutional liberty that sovereignty resides in the people.—Cooley, *Principles*, p. 23. Having established their independence the people of the several States formed governments based upon written constitutions for the better exercise of their sovereign powers. By these constitutions republican governments were established with departments for the exercise of sovereign powers in the manner prescribed by the people. The will of the people was stated to be the supreme authority, and the constitu-

**The text gives the prevailing theory in regard to the anomalous fact that sovereign powers are wielded by both the State and National government. The States' Rights school, under the lead of Calhoun, asserted that sovereignty as well as sovereign powers are indivisible, and denied that the Constitution or any real law could be the result of contract, claiming that thirteen sovereignties could not create another sovereignty. Calhoun, *Works*, I., 156, et. seq.

tions were subject to alteration or amendment by the people as well as subject to their fundamental and absolute right of revolution. When the Federal government was established the sovereign people apportioned between the United States and the States the exercise of sovereign powers. The United States was given the supreme and uncontrollable power in respect to certain subjects with jurisdiction throughout all the States, while the States were to retain the like unqualified power within their respective limits in respect to other subjects. The grant of powers by the people did not exhaust the power which they possessed. In some cases the States have a qualified and defeasible power to exercise for a time the control of subjects granted to the United States.—*License Cases*, 5 How., 504-588; *Smith v. Alabama*, 124 U. S., 465; *Cooley*, Principles, 21-22; see post, secs. 132, 143.

Sec. 78. ASSOCIATION OF STATES.—The essential element of a State or nation is the possession of sovereign power; the sovereignty is the State's highest attribute. This sovereignty is in its very nature single and indivisible, hence a State is separate from every other, and its sovereignty ends at territorial lines. But sovereign States may make compacts with one another, and these compacts may result in a treaty, an alliance, a league, or a confederation.

Sec. 79. SAME SUBJECT—A CONFEDERATION.—A Confederation is the highest step in the association of sovereign States, and the last step which may be taken without the formation of a single Fed-

eral State. It differs from a treaty or alliance in that it has governmental organization. A Confederation results from an agreement to place certain governmental powers in the control of a central organization, with a further agreement on the part of the States to obey the regulations of the central body in those matters. The sovereignty and independence of the confederated States is admitted, and its result is not to make one great State but to allow two or more States to operate in conjunction. The Germans express the idea of a Confederation by the word "Staatenbund" (States in band).—Calhoun, Works, I., 156.

Sec. 80. A FEDERAL STATE.—A Federal State is one supreme State which is composed of a number of subordinate members, which may or may not have been sovereign States at some previous time. A Federal State is most frequently a development of a Confederation; this is so in the case of the United States, Germany and Switzerland. In a Federal State the allied States form a Union, which is the single collective government, but this union does not destroy their separate organization, or deprive them of sovereign power in administering local concerns.—Black, Const. Law, 27. The central power is made a true State, with sovereign powers, external and internal, in national affairs; and its authority is directed to the individual citizens of all the States, as well as to the States themselves. In a Confederation there are a number of sovereign States, in a Federal State there is only one sovereign State; it is, as the German word expresses it, a Bundesstaat (banded State).

Sec. 81. THE UNITED STATES A FEDERAL STATE.—The Constitution fused the people of the several States into one people of the larger United States. The Constitution was agreed upon by delegates representing the States, was then submitted to the people of the several States and by them adopted through delegates elected for the express purpose of passing upon it. Thus the Confederation was replaced by a national government which the people of all the States had formed, and the citizens of each State became also citizens of the United States.—*Cohens v. Virginia*, 6 Wheat., 264; *Minor v. Happersett*, 21 Wall., 162. “The people of the United States and the population of the States are the same individuals. Federal government and State governments are their creatures, and have the same object—the welfare of the people.”—Von Holst, *Const. Law*, 58. The Federal government became the agent of the people rather than of the States. It is their exclusive agency in all their affairs as a nation, and has paramount authority within the sphere allotted to it. The Constitution thus makes the Union a legal Federal State.—*Martin v. Hunter*, 1. Wheat., 304-324.

Sec. 82. A FEDERAL GOVERNMENT.—Alexander Hamilton defined a Federal government as “one in which the federal authority is independent of any of its component parts within the sphere of the federal action.” He distinguished it from a Confederate government “in which the States alone are sovereign, and which possesses no inherent power.”—*Federalist*, No. 36. A Federal government may also be distin-

guished from a purely National government in which the central authority is not limited to a definite sphere.*

Sec. 83. THE UNITED STATES A FEDERAL GOVERNMENT.—By the Constitution the United States is given certain powers, and within the scope of this grant it is sovereign and supreme. Whatever is not conferred is withheld, and belongs to the several States or to the people thereof.—*Calder v. Bull*, 3 Dall., 386. The States are also supreme within their sphere, and the Constitution provides for their perpetuation and integrity. In *Texas v. White*, 7 Wall., 725-6, it is held that as the Articles of Confederation declared the Union to be perpetual, and the Preamble to the Constitution declared that its purpose was to “form a more perfect Union,” it is therefore indissoluble, and when a State is once in the Union, there is “no place for reconsideration or revocation, except through revolution, or through the consent of the States.” In the same decision the court held that “the perpetuity and indissolubility of the Union by no means implies the loss of distinct and individual existence, or of the right of self-government by the States. Without the States in Union there could be no such political body as the United States. Not only, therefore, can there be no loss of separate and independent autonomy to the States, through their union under the Constitution, but it may not unreasonably be said that

*The so-called Federalist party, led by Hamilton, advocated nationalism, while the anti-Federalist party favored a true Federal government. See Schouler, *Hist. U. S.*, I., 54.

the preservation of the States and the maintenance of their governments are as much within the design and care of the Constitution as the preservation of the Union and the maintenance of the national government. The Constitution in all its provisions looks to an indestructible Union composed of indestructible States." Thus the United States has in the most perfect sense a Federal government.

Sec. 84. CONSTITUTION DEFINED AND EXPLAINED.—A Constitution is the fundamental law of the State, and embraces the principles upon which the government is founded, and regulates the division of the sovereign powers.*

Every State has a Constitution upon which its government is founded. From the earliest times men have sought to construct these fundamental laws, which direct what persons or body of persons shall possess each class of sovereign powers, and determine to what department each class of powers shall be confined and the manner in which such powers shall be exercised. Many theories have been advanced as to the best constitutional make-up of the government. The Constitution of the United States is a combination of the principles found in the Constitutions of England and the American Colonies, with additions and compromises to meet the political condition of the combined States.

*The term constitution may be defined as the body of rules and maxims in accordance with which the powers of sovereignty are habitually exercised. Cooley, Principles, 3d ed 22.

Sec. 85. WRITTEN AND UNWRITTEN CONSTITUTIONS.—Constitutions are, 1, written; or, 2, unwritten.

1. Written Constitutions. A written Constitution is one whose provisions are written in an instrument evidencing the actual frame of government.

2. Unwritten Constitutions. An unwritten Constitution is one built up by usages, decisions of the highest courts, and laws and precedents established in critical periods. The English Constitution, which is unwritten, in this sense, is embraced in the common law, statutes, maxims, royal charters, declarations of rights and decisions of the courts. Unwritten Constitutions include many principles which are mere understandings, as the maxim in the English Constitution that the king can do no wrong, is construed to mean that the king cannot intend a wrong, and that his advisers who have encouraged him are responsible for the wrong. Some of these understandings have come to attach to our written Constitution. Thus the election of the President was intended to be indirectly by the electors, but by a long followed rule the electors vote as they are instructed by the party conventions. It is not a constitutional understanding, however, that the President shall not hold office for more than two terms. Our Constitution has been insensibly modified by the decisions of the Supreme Court, in the exercise of its power to interpret the provisions of the Constitution and apply the law to the cases which come before it.

Sec. 86. WRITTEN CONSTITUTIONS IN THE UNITED STATES.—The Constitution of the United States and the Constitutions of the several States are written, and in theory can be changed only by written amendments made in the manner prescribed in the Constitutions themselves. Our written Constitutions are claimed to possess the advantages of certainty and definiteness, and to be less likely to be disregarded as the method of altering them makes them superior to the ordinary statute. The principles of an unwritten Constitution may be altered or overturned by the ordinary law. A written Constitution is less easily modified by the people, and is more rigid and inflexible than an unwritten one. This may or may not be an advantage. If the character of the legislative body is such that the interests of the people are in jeopardy, it is an advantage; but where the legislature and the people are progressive a written Constitution may retard growth. (See Sec. 31, How to Study Law.)

Sec. 87. CONSTITUTIONAL LAW DEFINED.—Constitutional law is that branch of jurisprudence which treats of the principles of government, and the practical exercise of the powers of government in conformity with those principles, as well as the construction to be given to the powers of government in their application to the interior relations of the people. As a strict science, American Constitutional law is the study of written Constitutions and their construction and exposition. The principles of this science are to be found in the decisions of our Supreme Courts and in the works of authoritative commentators. Constitutional law is sometimes called political law.

Sec. 88. DUAL CONSTITUTIONS.—Under our Federal system of government we have dual Constitutions—the Federal Constitution, which is the supreme law of the Union; and the State Constitutions, as the supreme law of the several States. The Federal government is a grant of powers from the people, and covers only a portion of the powers of sovereignty; all other powers remain in the States or the people. The States having existed before the National government, and having been sovereign until the formation of the Federal government, are construed to retain all powers not granted by the people to the Federal government at the time of the ratification of the Constitution, or by subsequent amendments. The legislatures of the States are thus limited only by the Constitution of the United States, and the Constitution of their own State. The Federal Constitution is expressly declared to be the supreme law of the land, and any State Constitution or law violating any of its provisions, or contrary to any law under its authority, is unconstitutional and void.—*Calder v. Bull*, 3 Dall., 386; *United States v. Cruikshanks*, 92 U. S., 542; *Const. U. S.*, Art. vi., Sec. 2; *Cooley*, Principles, 3d ed., 31-33.

Sec. 89. CONSTRUCTION OF WRITTEN CONSTITUTIONS.—All written Constitutions are constructed upon a general uniform plan. They declare: 1. The rights of the people to liberty, property, etc., by a bill of rights. 2. The frame of the government. These two things are the essential and important provisions in all Constitutions.

Sec. 90. SAME SUBJECT—BILL OF RIGHTS.

—A Bill of Rights is the declaration of the fundamental principles of liberty and property which are to govern the people until changed. It was urged in the Federalist that these would be embodied in our Federal Constitution without being expressly stated. They were left out of the original Constitution and subsequently added by amendments to allay the fears of the people.*

*The principles usually declared in a Bill of Rights in America are those which have been formulated in England from the time of the first great charter granting or recognizing the rights of the people in 1215. This charter, known as "Magna Charta," declared among other things that "No freeman shall be taken or imprisoned or disseized or outlawed or banished or anyways destroyed, nor will the King pass upon him or commit him to prison, unless by the judgment of his peers or the law of the land," and was so distasteful to the Crown that it had to be coercively confirmed more than thirty times between the reigns of Edward I. and Henry IV. In 1628 came "The Petition of Rights," a Parliamentary declaration of the rights of the people assented to by Charles I., and for a violation of which he lost his head. After the Revolution and the Commonwealth, Charles II. assented to "The Habeas Corpus Act" to regain the throne. Another revolution was necessary to gain the "Bill of Rights" of 1688, when William and Mary ascended the throne. These rights were again asserted in the "Act of Settlement" in 1701. We have as yet had no similar contention to have them inserted in our Constitutions, and it is something of an anomaly to have them at all in a government said to be of the people, by the people and for the people.

In substance these rights are: 1. The right of personal security, or the right to be free from the intrusion upon one's liberty by the government, save as a punishment for crime. 2. The right of personal liberty, or the right to go where one pleases and do what one pleases, without restraint, except by

Sec. 91. SAME SUBJECT—THE FRAME OF GOVERNMENT.—The frame of government in a Constitution signifies the distribution of political power, or the pointing out of the avenues through which the sovereignty of the State is to be exercised. Thus our Federal Constitution, as well as the several State Constitutions, establish republican governments as distinguished from monarchical and aristocratical governments. Further, our Constitutions divide the political power into three branches,—the executive, legislative and judicial,—each branch being in the main independent and exclusive in its general field.

The idea of this tripartite division of governmental powers was suggested by Aristotle in his "Politics," book 6, ch. 11, and developed by Montesquieu, a French writer of the first half of the eighteenth century. (*Esprit des Lois*, liv. 11, ch. 6.) This plan had found favor and was in practice in some of the Colonies prior to the formation of the Union, but without the Constitutional provision separating the powers of government the legislature might have exercised all branches of governmental power.—*Ross v. Whitman*, 6 Cal., 361; *Calder v. Bull*, 2 Root (Conn.), 350.

The division of governmental powers into these three branches is a natural one under Constitutional principles. In the process of government, laws are to

due process of law. 3. The right of private property, which consists in the free use of one's property without control or diminution, except by the law of the land. 4. The right of justice, which included the right of trial by jury and the other securities to which every man charged with crime is entitled, 5. Right to petition for redress. 6. Right to bear arms,

be made, executed, and interpreted. This power to make and prescribe, or to alter, amend or repeal laws, is the function of the legislative department. The power to enforce and carry out the law is the province of the executive department, while the application of the law to cases, and interpreting the true intent of the law-makers, is the function of the judicial department. In the practical exercise of its powers each department makes use of auxiliary powers necessary to its security and efficiency, and the Constitution recognizes that the separation of powers is not absolute in every particular.

CHAPTER III.

THE CONSTITUTION, PREAMBLE AND LEGISLATURE.

THE PREAMBLE.

We, the people of the United States, in order to form a more perfect union, establish justice, insure domestic tranquillity, provide for the common defense, promote the general welfare, and secure the blessings of liberty to ourselves and our posterity, do ordain and establish this Constitution for the United States of America.*

Sec. 92. THE PREAMBLE CONSIDERED.—The opening paragraph of the Federal Constitution, given above, is called the preamble. A preamble signifies the introductory part of a statute or resolution, and states or indicates the reason and intent of what follows. Though it is held that the preamble is not an independent source of power to the Federal authorities, yet it has a definite weight and is an essential part of the Constitution itself, being to it what the enacting clause is to an ordinary law. The preamble declares by whom the Constitution was adopted and for what purposes.

*That the student may have the clause of the Constitution before him which is being construed and discussed, we have chosen the plan of giving, in smaller type, the provisions of the Constitution, and immediately following the rulings and decisions which have been made in its application and interpretation. This plan affords a connected view of the instrument as a whole.

Sec. 93. SAME SUBJECT—"THE PEOPLE OF THE UNITED STATES."—It is declared in the preamble that "the people of the United States" adopted the Constitution. A dispute quickly arose over this phrase. The State's-rights party claimed that in fact and law there was no single entity known as "the people of the United States," and that the Constitution was a compact between the States. This party, under the leadership of John C. Calhoun, of South Carolina, contended that the States were sovereign under the Constitution as well as before, and that each State could decide for itself the constitutional authority of the central government, and, if necessary, declare the action of the government null and void. It was a logical deduction from this theory of Calhoun's that the sovereign States could withdraw from the compact whenever their sovereign will changed and the Federal government would have no power to coerce them. Secession, or the withdrawing from the Union, was claimed as an inherent right of the sovereign States, and one that could not be surrendered by the adoption of the Constitution.—Von Holst, *Const. Law*, 39-41. The civil war put an end to the claim of the States to sovereignty and the right to secede from the Union, and the question is now settled that the people of the United States gave the Constitution to the Union. The people rightly named themselves as the possessors of sovereignty, and justly undertook the establishment of a government by the Constitution.—*Martin v. Hunter*, 1. *Wheat.*, 304-324. The new government thus established did not lose sight of the or-

ganizations through which the people had operated, and the Constitution recognizes the federal character of the nation which it established.—*Texas v. White*, 7 Wall., 725.*

Sec. 94. SAME SUBJECT—THE PURPOSE OF THE CONSTITUTION.—The preamble tersely and yet accurately states the purposes of the Constitution. In *Chisholm v. Georgia*, 2 Dall., 419, it was said that these purposes “comprise everything requisite, with the blessing of Divine Providence, to render a people prosperous and happy.”

ARTICLE I.

Section I. Two Houses.

All legislative power herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Sec. 95. A BICAMERAL LEGISLATURE.—This section gives the legislative power of the United States to a Congress consisting of two houses or chambers whose concurrent action is necessary to valid legislation, and establishes the bicameral system of law-making. The Confederation had a single legislative body, or a unicameral system. The Greek and

*The language of the preamble excludes the idea that the Constitution was a compact between the States, and the resolution adopted by the Constitutional Convention “that a National government ought to be established, consisting of a supreme legislative, executive and judiciary,” shows clearly that the members of the Convention understood that the Confederation was to be replaced by a Federal State. *Madison Papers*, 746-761; *Federalist*, No. 9.

Roman legislatures were unicameral in form, and were free from the disputes and deadlocks so common to our equal and co-ordinate chambers, as well as capable of showing greater strength and unity of purpose. While unanimity has its value in some cases, the effectual check which the bicameral system offers to hasty and ill-considered legislation was deemed of immeasurably greater importance by the framers of the Constitution. The two-chamber system was in practice in a number of States, and the security against evil legislation afforded by the mutual check of the two bodies was deemed a valuable feature in the construction of the Federal government.*

*The idea of checking the legislative power to prevent it from becoming a menace to the people has not ended with the establishment of the bicameral system in America. Log-rolling schemes and wholesale bribery in both State and National legislatures have shown the necessity of further restrictions on the legislative power of the people's representatives (?). The States in their Constitutions lay down with great minuteness the scope of the legislative power in regard to those matters which are the most likely to be abused, and limit the legislature in various other ways. Further, there is a quite general demand that the people assume the power of checking and initiating laws by the system known as the referendum and initiative. By the referendum, laws distasteful to the people could be submitted to a vote and would stand or fall as a majority of the people decided. Through the initiative the people could frame a law by petition and vote on it by the referendum. Both the cantonal and federal governments in Switzerland have adopted the initiative and referendum. The State of South Dakota adopted a Constitutional amendment in 1898, by which the people may control the laws by the referendum and initiative.

Sec. 96. CONGRESS HAS ALL LEGISLATIVE POWER.—The two houses acting together constitute a "Congress of the United States," and have all legislative power. The President, though given a qualified veto power on the action of Congress, is not thereby given a legislative function. He may delay but cannot forbid legislation. His failure to approve the laws passed by Congress imposes upon the two houses more stringent conditions, and in this way the veto power acts as a check upon the law-making power.—Von Holst, *Const. Law*, 112.

Section 2. House of Representatives.

Cl. 1. The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State Legislature.

Sec. 97. REPRESENTATIVES CHOSEN DIRECTLY BY THE PEOPLE.—That the members of the most numerous legislative body in a republican government should be elected by the people directly ought to have been beyond contention. But there were men in the Convention who favored an indirect election by the State Legislatures. These persons argued that the people were generally ignorant and easily misled. They claimed that the chief evils in government arose from excessive democracy. On what facts they based these assertions does not appear. But the more democratic theory prevailed, and Representatives are elected directly by the voters. They hold office for two years, and the entire body

changes or is renewed at the end of this period. The wisdom of this provision is now unquestioned, and a quite general impression prevails that the Senators should be elected in the same way.

Sec. 98. WHO MAY VOTE FOR REPRESENTATIVES.—The fixing of the qualification of electors or voters is left primarily to the States to determine. But all whom they qualify to vote for the most numerous branch of the State legislature are ipse facto qualified to vote for Representatives. The States have variously determined the qualifications of electors, but as a rule all male citizens, twenty-one years of age, are so qualified if residents of the State and district for a prescribed time. The right to vote has been extended in some of the States to persons who are not as yet citizens of the United States, as aliens who have but declared their intention to become citizens, and have resided the prescribed time in the State. In a few of the States women are admitted to exercise the elective franchise equally with men.*

The fifteenth amendment precluded the States from denying the franchise to citizens on account of race, color, or previous condition of servitude. But other restrictions may be placed on the franchise, so that universal suffrage does not exist in the United States.—Von Holst, *Const. Law*, 72-3.

*In Colorado, Idaho, Utah and Wyoming women are allowed to vote at all elections, and in New Hampshire, Montana and Michigan women can vote for school officers. *World Almanac*, 1899, p. 134.

Cl. 2. No person shall be a Representative who shall not have attained the age of twenty-five years, and been seven years a citizen of the United States, and who shall not, when elected, be an inhabitant of the State in which he shall be chosen.

Sec. 99. WHO MAY BE A REPRESENTATIVE.—The Constitution prescribes the qualifications of Representatives. They were easily decided upon by the Convention. That it might be a truly representative body the members are required to be inhabitants of the State in which they may be chosen. In England a member of Parliament need not be a resident of the place which he represents. A citizen whose official duties take him outside of the State is still considered an inhabitant and eligible to election. The third section of the fourteenth amendment disqualifies certain persons to hold office until Congress has removed the disability.

Cl. 3. Representatives and direct taxes shall be apportioned among the several States which may be included within this Union, according to their respective numbers, which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three-fifths of all other persons. The actual enumeration shall be made within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct. The number of Representatives shall not exceed one for every thirty thousand, but each State shall have at least one Representative, and until such enumeration shall be made, the State of New Hampshire shall be entitled to choose three, Massachusetts eight, Rhode Island and Province Plantations one, Connecticut five, New York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five and Georgia three.

Sec. 100. APPORTIONING THE REPRESENTATIVES.—This clause of the Constitution embraces one of the great compromises made in the convention, and without which the various factions could never have united on the Federal Constitution. The number of Representatives being determined by population, the Southern States wished to have the slaves counted to swell their representation in Congress, the Northern States, having few slaves, desired to exclude them from the count. The provision in this clause was the compromise effected. "Three-fifths of all other persons" meant the slaves, but not wishing to mention slaves in a Constitution based on a declaration of universal freedom, the framers used this circumlocution. The civil war put an end to slavery, and by the second section of the fourteenth amendment provision is made for the apportioning of Representatives under the new regime.—See post., Ch. ix.

Sec. 101. SAME SUBJECT—DIRECT TAXES.—The Northern States also demanded that if the slaves were to count for representation they should count in apportioning the direct taxes, hence the provision "Representative and direct taxes," etc. The term "direct taxes" was not defined by the Convention, and just what taxes it was intended to cover is not known. The Supreme Court was early called upon to decide whether a tax on carriages by number was a direct tax, and held that it was not.—*Hylton v. United States*, 3 Dall., 171. The judges, three of whom had been members of the Constitutional Con-

vention, were of the opinion that "direct taxes" included only land and capitation taxes. The lead of this decision has been followed in a number of cases and in *Springer v. United States*, 102 U. S., 586, it was held that an income tax was not a direct tax. A late decision of the Supreme Court changes this well-established rule, and declares that an income tax is a direct tax within the meaning of this provision. This subject will be referred to again under the taxing power.—*Q. v. post.*, sec. 137.

Sec. 102. SAME SUBJECT—THE DECENNIAL CENSUS.—Every ten years a census or enumeration of the inhabitants is taken, and upon this basis the Representatives are apportioned. The Constitution does not fix the number of Representatives, but provides that they shall not exceed one for each 30,000 inhabitants, and that each State shall have at least one Representative. Under the provisional apportionment there were sixty-five members. In 1793, the basis of representation was raised to 33,000, and this number has been steadily increased each decade, until now (1890), the population necessary to representation is 173,901, and on this basis there are 357 Representatives.*

*The Census Bureau is under the Department of the Interior, and in addition to enumerating the inhabitants, takes advantage of the plan to gather valuable statistics along other lines.

The provision that each State must have at least one Representative has been of benefit to States with a light population in a number of cases. In 1899, Delaware, Idaho, Mon-

Cl. 4. When vacancies happen in the representation from any State, the executive authority thereof shall issue writs of election to fill such vacancies.

Sec. 103. VACANCIES FILLED BY SPECIAL ELECTIONS.—In carrying out the plan of forming a popular branch of the National legislature it is provided that vacancies in the representation from any State shall be filled by special elections called by the executive of the State. This method of filling vacancies appealed to the convention as proper in keeping the legislative department independent of the executive, which would not be the case if the executive could fill vacancies by appointment. Representatives are in all cases to be chosen directly by the people. Vacancies may happen through the death, resignation or expulsion of a member, or from the acceptance of a Federal office which disqualifies a member.—Rev. Stat. U. S., Sec. 26.

Cl. 5. The House of Representatives shall choose their Speaker and other officers, and shall have the sole power of impeachment.

Sec. 104. THE SPEAKER OF THE HOUSE.—The Constitution gives the House the power of organization and the right to elect its Speaker and other officers. The term "Speaker" was first applied to the presiding officer of the British House of Commons. In

_____ tana, Nevada, Utah and Wyoming had each but one Representative.

The Territories each elect a delegate to the House of Representatives; these delegates may sit with the Representatives and debate, but cannot vote. Arizona, New Mexico and Oklahoma are the Territories which send delegates. Rev. Stat. U. S., Sec. 1862; World Almanac for 1899.

our country it is used to designate the presiding officer of the National House of Representatives and of the lower houses of the State legislatures. The Speaker of the House of Representatives (as also in the State legislatures) is a leader of the party having a majority of the members. His powers extend to the preservation of order and the regulation of debate under the rules of the House. He may vote on all questions and participate in general debate after calling another member to the chair. Having the right to appoint the standing committees which shape legislation, he is in a position to control the course of legislation to a large extent and is, therefore, the most important officer in our system of government.*—Cent. Dict. "Speaker;" Von Holst, *Const. Law*, 82; and *Const. Hist.* V., 203-219.

Sec. 105. IMPEACHMENT.—The House of Representatives has sole power of impeachment. Impeachment is a judicial proceeding or prosecution for maladministration or corrupt conduct in office. The power of the House only extends to preferring the articles of impeachment, that is, its power is to indict or prefer the charge, and the Senate, as we shall see in a later section, is given the power to try. This plan of making the National legislature a high court for certain political crimes was borrowed from the English

* "Not only that the Standing Committees are the most essential machinery of our governmental system, but also that the Speaker of the House of Representatives is the most powerful functionary of that system." W. Wilson, *Cong. Gov.*, p. 103.

system, where the high court of Parliament has similar powers; the House of Commons impeaching, and the House of Lords trying.—See Blackstone Com. iv., 259; 6 Am. Law Reg. N. S., 257 and 641.

Section 3. The Senate.

CL. 1. The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof for six years, and each Senator shall have one vote.

Sec. 106. "TWO SENATORS FROM EACH STATE."—The Constitution provides for two Senators from each State. This was the result of a compromise between the large and small States. The small States demanded equal representation in one of the houses, lest they be outvoted. The Senators in a sense represent the States, which in this branch of the legislature are equal. The Senate is called the upper house of the Federal legislature; its superiority is deemed to arise from the method of its organization. It consists of a smaller number of members, chosen for a longer term than the members of the House, and elected indirectly, that is, by the State legislatures.* In the Congress of the Confederation the States voted as units, that is, a majority of the members from the State cast the vote of the State, but in the Senate each Senator has one vote, and though the Senators from a State may be paired, or both on the minority side of a question, there is no ground of complaint on the part of the State.—Von Holst, Const. Law, 79.

*In some cases the people have gotten around this indirect election of Senators as provided by the Constitution by pledging their legislative candidates to vote for a certain

Cl. 2. Immediately after they shall be assembled, in consequence of the first election, they shall be divided, as equally as may be, into three classes. The seats of the Senators of the first class shall be vacated at the expiration of the second year, of the second class at the expiration of the fourth year, and of the third class at the expiration of the sixth year, so that one-third may be chosen every second year; and if vacancies happen, by resignation or otherwise, during the recess of the Legislature of any State, the executive thereof may make temporary appointments until the next meeting of the Legislature, which shall then fill such vacancies.

Sec. 107. THE SENATE PARTLY RENEWED EVERY TWO YEARS.—While the House of Representatives changes each legislative period or “Congress,” the Senators hold for six years and are arranged into three classes, so that one-third of the members are renewed every two years. It has been arranged that both Senators from a State do not fall in the same class, and when new States are admitted to the Union it is decided by lot which Senator shall hold for the long term and which for the short term. This arrangement makes the Senate a continuous body, always provided with experienced members. On the one hand it is not liable to be radically affected by any

person for Senator. The wisdom of the Constitutional provision has certainly been outgrown, if it ever had any. The people are deprived of their right to choose a fit person, and the Legislature, instead of using its combined intelligence to select a competent person, quite often sells the office outright to the highest bidder. As a result of bribery our “upper house” threatens to become not only the “American House of Lords,” but also a “Boodlers’ Roost,” where only plutocrats and trust barons can hope to gain admission. Deadlocks frequently occur in the State Legislatures over the selection of a Senator by which the State is deprived of its representation for a considerable time.

unusual political excitement, because only partly renewed each two years, and, on the other hand, this biennial infusion of new members keeps it from getting out of touch with the people, as would be the case if totally renewed every six years.

Sec. 108. VACANCIES IN THE SENATE.—Vacancies in the Senate are filled provisionally by the State executive. The importance of a State's representation is greater than in the House. Appointment is the speediest method of filling a vacancy, and was selected that the States might not be deprived of their representation. The appointment is effective only during the legislative recess, and must be ratified by the legislature when assembled, or a new Senator elected. The person elected to fill a vacancy holds only for the unexpired term and not for a full period of six years. If a vacancy occurs while the legislature is in session it elects a Senator at once. Rev. Stat. U. S., Sec. 17.

Cl. 3. No person shall be a Senator who shall not have attained to the age of thirty years and been nine years a citizen of the United States, and who shall not, when elected, be an inhabitant of that State for which he shall be chosen.

Sec. 109. QUALIFICATIONS OF SENATORS.—The Constitutional conditions for eligibility to a Senatorship are the same in kind as those for the lower house; they are slightly higher in degree in pursuance of the plan of making the Senate a more select body. The requirement as to being an inhabitant was to insure the States local representation and enable them to protect their special interests in the National legislature. A number of States have seen fit to elect per-

sons as Senators whose true residence and property interests were without the State.

Cl. 4. The Vice President of the United States shall be President of the Senate, but shall have no vote, unless they be equally divided.

Sec. 110. THE PRESIDENT OF THE SENATE.—Possibly to carry out the plan of making the Senate a higher and more select body than the House, it is provided that the second highest executive head shall be its regular presiding officer. To prevent him from becoming a legislative officer as well as an executive one, he is given a vote only in case of an equal division, and is divested of his office as President of the Senate when he exercises the duties of President of the United States.*

Cl. 5. The Senate shall choose their other officers, and also a President pro tempore, in the absence of the Vice President, or when he shall exercise the office of President of the United States.

Sec. 111. ORGANIZATION.—The Senate has as full a control of its organization as the House, with the single exception of its presiding officer. It chooses its other officers and also a President pro tempore. An opportunity is usually given the Senate to choose a President pro tempore before the close of each session,

*This provision is an anomalous one, and was doubtless suggested or borrowed from the English system, in which the King was supposed to sit as the head officer over the lords spiritual and temporal in one higher hall, while the commons sit by themselves in another. See Blackstone, Com. I., 153. The position comes quite convenient for the Vice President, who would otherwise be considerable of a figure head.

that it may have a presiding officer in the absence of the Vice President, or in case of his being called to the Presidency.

Cl. 6. The Senate shall have the sole power to try all impeachments. When sitting for that purpose, they shall be on oath or affirmation. When the President of the United States is tried, the Chief Justice shall preside, and no person shall be convicted without the concurrence of two-thirds of the members present.

Cl. 7. Judgment in case of impeachment shall not extend farther than to removal from office and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment and punishment according to law.

Sec. 112. POWER TO TRY IMPEACHMENTS.

—As the upper house, the Senate is given sole power to try impeachments. This function being a judicial one, it is proper that the members should be on oath. When trying the President its character as a court is further augmented by requiring the Chief Justice of the Supreme Court to preside. The decision is final, and being of a political nature and extending only to removal from and disqualification to hold office, does not preclude punishment according to law for the same offense. The rules of procedure are fixed by the same bodies given power to impeach and try.—Von Holst, Const. Law, 162-3.

Section 4. Concerning Both Houses.

Cl. 1. The times, places and manner of holding elections for Senators and Representatives shall be prescribed in each State by the Legislature thereof; but the Congress may at any time, by law, make or alter such regulations, except as to the place of choosing Senators.

Sec. 113. POWER OF CONGRESS OVER FEDERAL ELECTIONS.—The Constitution in this section authorized the States to make arrangements for the Federal elections, but provided that when Congress should subsequently act it would have power to fix the times and places and prescribe the manner of holding elections for the Federal legislature, except as to prescribing the place of choosing Senators. This exception was made necessary from the character of the Union as a Federal State. It would not be consistent with the independence of the States in local matters for the National Congress to determine the place of meeting for their legislatures. Until 1842 Congress did not exercise its power; then it provided that Representatives should be elected by districts.

In 1872 Congress provided that from and after 1876 members of the House should be elected every second year in fixed geographical districts of contiguous territory, the districts being equal to the number of Representatives to which the State was entitled. But when a State is entitled to more Representatives on the basis of a new census, it may elect the new members from the State at large (Congressmen at large). It is provided by law that the elections for Representatives shall take place on the Tuesday next after the first Monday of November, and that all votes must be by written or printed ballots.—Rev. Stat. U. S., Secs. 23, 25, 27.

Congress has provided in regard to the election of Senators that the State Legislature which is chosen next preceding the expiration of the time for which any Senator was elected to represent such State in Con-

gress shall, on the second Tuesday after the meeting and organization thereof, proceed to elect a Senator. Failing to elect the first day, at least one vote is required to be taken every day during the session of the legislature, or until a Senator is chosen. An existing vacancy is filled in the same way, and a vacancy occurring during the session is filled by election on the second Tuesday after the legislature has organized and has notice of such vacancy.—Rev. Stat. U. S., Secs. 10, 15, 16, 17; Von Holst, Const. Law, 76-7.

Cl. 2. The Congress shall assemble at least once in every year, and such meeting shall be on the first Monday in December, unless they shall by law appoint a different day.

Sec. 114. WHEN AND HOW OFTEN CONGRESS MEETS.—In organizing the three departments of government the evident purpose of the framers of the Constitution was to make the departments as nearly as possible independent of one another. Hence the Constitution provided for the assembling of the legislative branch of the Federal government without the intervention of the executive, except, as we shall see, in cases of emergency, when Congress may be called in extra session. By the Constitution Congress is required to meet at least once a year, and on the first Monday in December, unless by law a different day is selected. Except for a brief period after 1867, Congress has followed the Constitutional provision as to annual meetings on the first Monday in December.

Congress consists of the two Houses elected for different periods, but for convenience the legislative

periods, or "Congresses," have been designated according to the term of the lower house. Each two years is a Congress, and consists of two regular sessions beginning on the first Monday in December of each year, called the first and second sessions, and such extra sessions as the President may have occasion to assemble. The first Congress was elected in 1789, so that the present Congress (February, 1899), is the 55th, and is in its second or last session. In December, 1899, the first session of the 56th Congress will assemble.*

Section 5. Organization Rules.

Cl. I. Each house shall be the judge of the elections, returns and qualifications of its own members, and a majority of each shall constitute a quorum to do business; but a smaller number may adjourn from day to day, and may be authorized to compel the attendance of absent members, in such manner and under such penalties as each House may provide.

Sec. 115. LEGISLATIVE AUTONOMY.—Each house is given power to pass upon the qualifications of its members. This power was necessary to their au-

*When Congress convenes, the President of the Senate administers the oath to its members, and takes charge of the organization.

In the House of Representatives, the clerk of the next preceding House makes a roll of the Representatives-elect, and places thereon the names of those persons, and those only, whose credentials show that they were regularly elected, in accordance with the laws of their States respectively, or the laws of the United States. In the absence or disability of the clerk, the sergeant-at-arms of the next preceding House performs this duty, and after him the duty may devolve upon the doorkeeper. One of these officers of the preceding House acts as temporary presiding officer until the Speaker is chosen. Rev. Stat. U. S., Secs. 28, 31, 32, 33.

onomous organization as independent departments in a Constitutional government.

The Constitution fixes the quorum at a majority of the members, and this means all the members elected. A quorum is an expression signifying the number necessary to transact business. In the English House of Commons forty members constitute a quorum. The Convention feared that if the quorum was fixed at less than a majority the number would be so small as to be a menace to those States distant from the seat of government and whose members would attend with more difficulty than those nearer the Capital. A less number than a majority may compel the attendance of absent members.

Cl. 2. Each house may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

Sec. 116. RULES OF PROCEDURE.—Each house has established elaborate rules of procedure, and the House of Representatives has gone so far as to provide by rule that members present, but not voting, may be counted in determining the presence of a quorum, and the Supreme Court has upheld the rule.—United States v. Ballin, 144 U. S. I.

Sec. 117. POWER TO PUNISH MEMBERS.—The Constitution gives each house the power to “punish members for disorderly behavior,” and it is contended that this wording gives only a disciplinary power to Congress as to acts committed during the session, and would not extend to acts committed elsewhere. But a broader view has prevailed, and in prac-

tice the power extends to acts committed when away from the house as a committeeman as well as for misconduct during the session. It is within the power of either house to say what conduct shall be deemed disorderly or dishonorable enough to require expulsion. The only appeal of the member is to the constituents, who may re-elect him. Beyond the power to expel, the punishment which the houses may inflict is not stated, but custom has limited it to such punishments as are consistent with the dignity of a citizen.—Von Holst, *Const. Law*, 102.

Sec. 118. SAME SUBJECT—MAY PUNISH OTHERS THAN MEMBERS.—The power of the houses to punish extends to others than members, and results from the occasional judicial function of these legislative bodies. Thus the House of Representatives was held to have power to punish a contumacious witness summoned in reference to an impeachment or other matter over which the House has constitutional control.—*Kilbourn v. Thompson*, 103 U. S., 168. But the houses must not exceed their constitutional jurisdiction or punish for contempt alone. The House may punish a "breach of its privileges" by arrest, censure, and imprisonment, but not beyond the close of the session. See *In Re Chapman*, 166 U. S., 661; *Anderson v. Dunn*, 6 Wheat., 204; *Von Holst, Const. Law*, 103.

Cl. 3. Each house shall keep a journal of its proceedings, and from time to time publish the same, excepting such parts as may in their judgment require secrecy; and the yeas and nays of the members of either House, on any question, shall, at the desire of one-fifth of those present, be entered on the journal.

Sec. 119. JOURNAL OF PROCEEDINGS.—

Several purposes are answered by the requirement that each house shall keep a journal of its proceedings. The plan effectually prevents the legislature from becoming a secret conclave, and prevents evil legislation by insuring prompt publication of the obnoxious law. These records have been kept and published.* The houses can say what is to be kept secret, but as it is clear that the Constitution intended publicity to be the rule and secrecy the exception, all meetings of the houses except executive sessions of the Senate are open to the public.

Sec. 120. FIXING THE RESPONSIBILITY.—

One-fifth of the members present can demand the "yeas and nays," that is, a call of the roll of membership and a registering on the journal the vote of each member for or against the measure. This plan enables the minority to fix the responsibility for a measure, and make it known to the constituencies how their representative voted. When the members of the House were less numerous it did not take long to call the yeas and nays, but at present several hours are required, and this is a favorite method of the minority to filibuster and delay action of any sort.

Cl. 4. Neither House during the session of Congress shall, without the consent of the other, adjourn for more than three

*These records are as follows: "The Debates and Proceedings in the Congress of the United States," which come down to 1837; the "Congressional Globe" begins in 1833 and extends to 1873, and the "Congressional Record" ever since 1873.

days, nor to any other place than that in which the two houses shall be sitting.

Sec. 121. INTERDEPENDENCE OF THE HOUSES.—This clause gives each house a power over the action of the other as respects adjournments for more than three days, and the place of sitting. The mutual dependence was deemed a wise provision to prevent them from separating or adjourning and thus defeating all legislation.

Section 6. Privileges and Disabilities.

Cl. 1. The Senators and Representatives shall receive a compensation for their services, to be ascertained by law, and paid out of the treasury of the United States. They shall in all cases, except treason, felony and breach of the peace, be privileged from arrest during their attendance at the session of their respective houses, and in going to or returning from the same; and for any speech or debate in either house they shall not be questioned in any other place.

Sec. 122. SALARIES.—The Constitution provides for paying the Federal legislators. In England members of Parliament get no salaries, and poor members are supported by their constituencies. In the United States it has been the policy of the Federal and State governments to pay salaries to legislators. The salary of Senators and Representatives is \$5,000 per annum, with traveling expenses in going to and returning from each session. The Speaker of the House gets \$8,000.

Sec. 123. PRIVILEGED FROM ARREST.—While the members of the Federal legislature are under the disciplinary power of their respective houses they enjoy privilege from arrest in certain cases. This provision was to prevent the people from being de-

prived of their representative in Congress for slight causes, and also to keep the members independent and unbiased by protecting them from being interfered with while performing their duties as legislators. The expression, "breach of the peace," has been extended by judicial decision to include all indictable offenses, so that the protection from arrest extends only to civil causes.—Von Holst, Const. Law, 104.

Sec. 124. FREEDOM OF SPEECH AND DEBATE.—To make the legislators feel secure and independent in declaring their just convictions, they are not to be questioned in any other place for any speech or debate in either house. The framers of the Constitution were establishing a legislature which should be free from all outside influences, and the independence of the members was secured as far as legal provisions could secure them. The exemption extends to votes cast, reports made, and to all official acts done by a member of either house. Whether members are liable for circulating their speeches out of either house is not definitely decided. The earlier decisions hold that the privilege is to be strictly construed and only to exempt such acts as are done in the fulfillment of official duties. In England the official publications directed to be made are protected from any suits for damages, and the better view in the United States is that a member will not be exposed to an action for libel or slander by sending to his constituents what he has said in Congress.—Von Holst, Const. Law, 105; Cooley, Principles, 51; *Coffin v. Coffin*, 4 Mass., 1.

Cl. 2. No Senator or Representative shall, during the time for which he was elected, be appointed to any civil office under the authority of the United States, which shall have been created, or the emoluments whereof shall have been increased during such time, and no person holding any office under the United States shall be a member of either house during his continuance in office.

Sec. 125. APPOINTMENT TO OTHER OFFICES.—To prevent the political corruption which might result from the unlimited power of the legislators to create lucrative offices for themselves they are made ineligible during the term to hold an office created or the salary of which has been raised, during the time for which they were elected. It is further provided that a citizen may not hold an office under the United States and be a member of either house. Such an officer may be elected to either house, and his office is thereupon deemed vacated. A member who accepts a Federal office forfeits his seat.

Section 7. Mode of Passing Laws.

Cl. 1. All bills for raising revenue shall originate in the House of Representatives; but the Senate may propose or concur with amendments, as on other bills.

Sec. 126. REPRESENTATIVES MUST VOTE THE TAXES.—This clause crystallizes the principle which has been so stubbornly maintained by the English speaking people that the people or their representatives must vote the taxes which the people are to pay. The provision was incorporated from the English Constitution, where the House of Lords is not permitted to amend or originate any revenue measure, and can only pass or reject the work of the Commons.

The Senate may concur or amend the revenue measures of the House, but in practice the House simply ignores the amendments of the Senate unless the Senate, by persisting in a refusal to pass any revenue measure, compels it to accept the amendments.—See Von Holst, *Const. Law*, 133.

Cl. 2. Every bill which shall have passed the House of Representatives and the Senate shall, before it becomes a law, be presented to the President of the United States; if he approve, he shall sign it; but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journal, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and if approved by two-thirds of that house, it shall become a law. But in all such cases the votes of both houses shall be determined by yeas and nays, and the names of the persons voting for and against the bill shall be entered on the journal of each house respectively. If any bill shall not be returned by the President within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the Congress by their adjournment prevent its return, in which case it shall not be a law.

Sec. 127. **MODE OF PASSING BILLS.**—The Constitution has left the forms to be observed in originating and passing bills to be determined by the rules adopted in each house. In general, all bills, save revenue bills, may originate in either house indifferently. Whenever a measure is introduced it is styled a "bill." Bills may be introduced by an individual member, on leave of the house, but are most frequently introduced by report from standing or special committees. In the House the standing committees, of which there are

a great number, are appointed by the Speaker, while in the Senate they are elected by the majority. Bills are required to be read three times in each house, and on three different days, unless there is need of greater expediency, when the rules are suspended and bills passed forthwith. The first reading is for information, and if there are any objections the vote is taken on the rejection of the bill; if not opposed or rejected it passes as a matter of course to its second reading, and the question is then upon its commitment or engrossment. If committed, it is either to a standing committee, a select committee, few in number, or to a general committee of the whole house. Only bills of great importance are considered in committee of the whole. After discussion in committee the bill is reported back to the house with or without amendment. If amendments are added in committee, these are acted upon by the house, and others may then be offered. When thus matured the question is upon its engrossment for a third reading; after this stage is reached amendments are rarely offered, though a rider or appended clause may be attached. The bill is now upon its final passage, and members array themselves for or against the measure. If it passes it is signed by the presiding officer and sent to the other house, where it goes through a similar procedure. If amendments are made in the other house it must go back to the house of its origin for concurrence. Having finally passed both houses it is enrolled and signed by the presiding officers of both houses, and ready to be sent to the President. See G. F. Hoar, "Conduct of Business in Congress," No. Am., Rev. Feb., 1879; Von Holst, Const. Law, 109.

Sec. 128. SIGNATURE OF THE PRESIDENT.

—The Constitution provides that a bill having passed both houses in the regular way must be sent to the President for his approval. Thus the President is made to co-operate in legislation. As previously shown (ante, Sec. 96), he cannot absolutely prevent the bill from becoming a law. If he signs the bill it becomes a law at once; if he refuses to sign it, the bill may still pass by a two-thirds vote in each house. Both the President and the Congress are prevented from being imposed upon by the sharp methods of the other. If the President neither signs nor returns a bill within ten days (Sundays excepted), it becomes a law; but if Congress adjourn within the ten days and thus prevent its return by the President the bill fails.

Sec. 129. THE SO-CALLED VETO POWER.—

The power given to the President by the Constitution to approve or refuse to approve legislation, is called the veto power. The word "veto" (I forbid) originated with the Roman Tribunes, who had the power to annul decrees of the Senate and civil magistrates. It now signifies the power of one branch of a government to forbid, oppose or delay the determinations of another branch. In England the Crown has the right to veto legislation, but it has not dared to exercise the right since the time of William III. (1692). The members of the Constitutional Convention were divided in regard to the veto power; some were in favor of an absolute veto or negative, that is, without the power in Congress to pass a bill over the veto. This would have given a despotic power to the President, and made it

dangerous for him to exercise the power at all. A qualified or limited veto was therefore decided upon, and under it, as Hamilton observed, "A man who might be afraid to defeat a law by his single veto, might not scruple to return it for reconsideration; subject to be finally rejected, only in the event of more than one-third in each house concurring in the sufficiency of his objections."—Federalist, No. 73. The limited veto is the wisest, as experience has shown. As exercised by the President it has proven a wise check on party legislation. The President, being elected by the people directly, feels responsible to them, and in the past has proven always a capable and judicious man. Bills are seldom passed over his veto. The veto power also serves to maintain the balance of power between the departments; but to prevent the executive from becoming a legislator the power is restraining rather than active. It has been urged that the President be given the power to veto a bill in part instead of in toto, as he at present is required to do.—Von Holst, *Const. Law*, 113.

Cl. 3. Every order, resolution, or vote to which the concurrence of the Senate and House of Representatives may be necessary (except on a question of adjournment), shall be presented to the President of the United States; and before the same shall take effect, shall be approved by him, or, being disapproved by him, shall be repassed by two-thirds of the Senate and House of Representatives, according to the rules and limitations prescribed in the case of a bill.

Sec. 130. EXTENT OF THE VETO.—The veto power was made to extend to every "order, resolution and vote," to prevent the legislature from evading the

check provided, by passing important matters in the shape of resolutions, orders, etc. It is construed that two-thirds of the members present and voting will serve to pass the bill over the veto.

CHAPTER IV.

THE GRANT OF POWERS TO CONGRESS.

Sec. 131. IN GENERAL.—Though the Constitution grants the powers to be considered in this chapter to Congress, they are in effect National powers to be exercised by the three departments of government. Many of the important functions of government begin with the enacting of laws, and the executive and judicial departments are thus given an enlarged sphere of action. Congress has power to make the laws, but the executive and judicial departments must execute and administer the laws when enacted. The Constitution does not define the powers granted to the government factors, it simply enumerates them. The governmental departments must themselves decide upon the boundaries of their powers. As we shall see later, the Federal Supreme Court is made the arbiter in determining whether or not the powers have been exceeded. And in these pages it is the decisions of this court in regard to the action of the other departments that will inform us what the Constitutional law of the United States really is. In construing the enumerated powers the court takes the view that as they are designed to accomplish a purpose, they must be considered together as a whole. Also that the enumerated and ex-

press powers carry with them implied or resulting powers sufficient to make workable and exploit them as granted. That is, in the interpretation of the powers, that method shall be chosen which permits the fulfillment of the purpose of the Grant. *Gibbons v. Ogden*, 9 Wheaton, 1; *Legal Tender Cases*, 12 Wall., 532.

Sec. 132. EXCLUSIVE AND CONCURRENT POWERS.—As a result of the Federal nature of the United States, powers not exclusively delegated to the United States may also be exercised by the State governments. Hamilton, in the *Federalist*, No. 32, thus specifies the exclusive powers of the United States: "Where the Constitution in express terms granted an exclusive authority to the Union; where it granted, in one instance, an authority to the Union, and in another prohibited the States from exercising like authority; and where it granted an authority to the Union, to which a similar authority in the States would be absolutely and totally repugnant." In case the power is not exclusive in this sense the States may enact laws relating to the same subjects which have been granted to the Federal government. These are called concurrent powers. Usually the field is not occupied by the two authorities at the same time, but may be in some cases.—Cooley, *Principles*, 36. In most cases Congress has failed to act, and the States legislate until it does so, when their power is divested and their action is replaced by that of Congress. See *Sturges v. Crowninshield*, 4 Wheat., 122; *McCulloch v. Maryland*, 4 Wheat., 316.

Section 8. The Congress Shall Have Power.

Cl. 1. To lay and collect taxes, duties, imposts and excises, (:) to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States.

Sec. 133. THE TAXING POWER.—One of the most important powers possessed by any government is that which secures to it an income adequate to meet its legitimate expenses. Under the Confederation the central government was dependent upon the States, as independent sovereignties for its revenues, and had no power to tax the people directly for its own support. This was one of the leading powers which the framers of the Constitution wished to confer on the new Union, but their character as judicious politicians kept them from going to the other extreme and giving the federal government *carte blanche* in the matter of taxation. The power to tax is inherent in sovereignty, and is unlimited; but the power when delegated may be limited as the sovereign people think best. The Convention had in mind the excesses committed by despotic governments possessing unlimited powers, hence they did not grant the power to tax without limitations. These limitations are in respect to the purposes for which taxes may be levied, and the manner of the levy.

Sec. 134. SAME SUBJECT—A DISPUTE AS TO PUNCTUATION.—The clause in the grant beginning "to pay the debts and provide for the common defense, etc.," was early claimed to confer a distinct and substantive power to tax; the contention being

that the whole paragraph conferring the taxing power should be read as though there was a semicolon after the word "excises," and not a comma. Thomas Jefferson pointed out that the true meaning of the entire clause was that "Congress shall have power to lay and collect taxes, etc., for the purpose of paying the debts, and providing for the common defense and general welfare." This is the construction which has come to prevail, so that Congress is limited in regard to the purposes for which taxes may be levied.—Cooley, Principles, 58; Pomeroy, Const. Law, Sec. 273; I. Story, Const., Secs. 907-921.

Sec. 135. SAME SUBJECT—LIMITATIONS AS TO THE PURPOSES OF THE TAX.—The clause is still unsatisfactory and the power indefinite. What are the debts that may be paid? How far does the power to provide for the common defense and general welfare extend? The factors of government must themselves decide these questions. Hence we must look to the action of Congress and the decisions of the Supreme Court to determine the construction of this power. Three general purposes are mentioned and these exclude all other purposes. So that every tax which is professedly laid for a private purpose is void as being unconstitutional.—Cooley, Prin. Tax, 58; Loan Association v. Topeka, 20 Wall., 655. But Congress has avoided the decisions of the courts by failing to state or specify the purposes to which the funds yielded by a proposed tax are to be applied. This is possible since the constitutionality of the tax laid, and

the constitutionality of the use to which it is to be put have been made separate things. The courts recognize that in determining what answers the general welfare and constitutes a public purpose the legislature must primarily decide, and they are slow to declare appropriations made by Congress unconstitutional. Generally the court will only arrest the proceedings and declare a levy void when the absence of public interest in the purpose for which funds are raised is so clear and palpable as to be perceptible at first blush.—*Broadhead v. Milwaukee*, 19 Wis., 624. The validity of the purpose of a tax has thus come to be largely a political one, and though the question of constitutionality has been debated in the legislature as to protective tariffs, levied as much to assist industries as for revenue, the courts have failed to declare such taxes bad. Congress having the power to levy any tax it deems necessary for the necessities of the government, the question of utility and equity of a particular tariff law is only incidental to the purpose of the exaction and will not be considered by the court.—*Veasie Bank v. Feno*, 8 Wall, 533-48; *McCulloch v. Maryland*, 4 Wheat., 316; *Cooley*, Principles, 58.

Sec. 136. SAME SUBJECT—LIMITATIONS AS TO THE MANNER OF TAXING.—Congress is given power to lay and collect taxes, duties, imposts, and excises; “but all duties, imposts, and excises shall be uniform throughout the United States.” The word “taxes,” in its widest sense, includes duties, imposts, and excises, as it covers any exaction made by the gov-

ernment for its own support. Duties include impositions laid upon commodities in any situation, but the term is usually applied to the levies made by the government on the importation or exportation of commodities. Imposts are duties levied upon imported articles. Excises are taxes levied upon the manufacture, sale, or consumption of articles, and upon licenses to pursue certain trades, deal in certain commodities or exercise special privileges.—Cooley, *Taxation*, 3. The rule requiring uniformity has been the occasion of considerable dispute, but has been construed to be complied with if the tax applies uniformly upon all in the same class or situation; and thus a tax would not be void as against this provision because not equally distributed throughout the United States.—*Head-Money Cases*, 112 U. S., 580. Neither is the rule respecting uniformity violated by exempting certain classes of property and persons from the operation of the tax on grounds of public policy, or by reason of other adequate consideration to the government from the parties exempted.—*Cooper v. Ash*, 76 Ill., 11; *Black*, *Const. Law*, 393-4.

Sec. 137. SAME SUBJECT—LIMITATIONS IN REGARD TO DIRECT TAXES.—As we have seen (*ante*, Sec. 101), Representatives and direct taxes are to be apportioned according to the population. The fourteenth amendment changes the method of apportioning Representatives, and omits the expression “and direct taxes” from the amended clause, which might put an end to this restriction if it were not pre-

scribed in another part of the Constitution. Article I., Sec. ix., Cl. 4, provides: "No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration hereinbefore directed to be taken." Hence Congress must apportion capitation and other direct taxes according to population.

A direct tax, as defined by Abbott's Law Dictionary, "is one that is demanded from the very persons who it is intended or desired should pay it. Indirect taxes are those which are demanded from one person in the expectation and intention that he shall indemnify himself at the expense of another, such as the excise or customs."

A capitation tax is one laid upon persons as individuals, irrespective of the amount of their property; it is a poll tax and also a direct tax.

In construing the meaning of the term "direct taxes" the court looked rather to the evident intent of the framers than to the political economists' definitions of direct taxes. As Judge Walker, in his *American Law*, page 128 (note), suggests, the rule in the Constitution as to direct taxes was a compromise in favor of the thinly peopled Southern States, whom it would have been unjust to tax as much per acre as more populous States. But this reason not applying to a tax on carriages or incomes, which are worth as much in the South as in the North, the court justly held that the provision only extended to land and capitation taxes. By a line of decisions rendered by the foremost judges and statesmen of the United States, this restriction has been construed not to extend to an in-

come tax.* But the Supreme Court, in a recent decision declaring unconstitutional the Income Tax law of August, 1894, has overruled the former decisions and declared that an income tax is unconstitutional unless levied and apportioned according to population.—*Pollock v. Farmers' Loan and Trust Co.*, 157 U. S., 430; *idem.*, 158; U. S., 601. The decision was five to four, and the four dissenting judges wrote separate opinions opposing the decision of the majority.

As a result of this decision direct taxes now include land and capitation taxes, taxes on the income from real estate or personal property and on personal property.

*In *Hylton vs. United States*, 3 Dall. 171, the judges held that a tax on carriages by number was not a direct tax within the meaning of the Constitution, and expressed the opinion that the provision only included land and capitation taxes. Mr. Justice Iredell holding that "As all direct taxes must be apportioned, it is evident that the Constitution contemplated none as direct but such as could be apportioned. If this cannot be apportioned, it is, therefore, not a direct tax in the sense of the Constitution."

Insurance Co. vs. Soule, 7 Wall. 433, and *Veazie Bank vs. Fenno*, 8 Wall. 533, hold that the income of an insurance company or bank may be taxed, and it will not be a direct tax. In *Scholey vs. Rew*, 23 Wall. 331, an assessment on the devolution of an estate, or the right to become entitled to the same or the income thereof, is not a direct tax. In *Springer vs. United States*, 102 U. S. 586, decided in 1881, the Supreme Court passed upon an Income Tax similar to the one recently declared unconstitutional, save that it possessed the added feature of being graduated, and declared the tax constitutional by a unanimous opinion. It being held to be an indirect tax and satisfying the Constitutional requirements if levied according to the rule of uniformity.

Sec. 138. TAXATION OF GOVERNMENT AGENCIES.—The power of the United States to tax does not extend to the States or any of their governmental agencies. As before stated the Constitution contemplates the perpetual maintenance of the States as well as the Union. The power to tax involves the power to destroy, and this power could not consistently be conferred to authorize either the Union or the States to tax, and thereby control the constitutional measures of the other. Hence it is held that the United States cannot tax a State municipal corporation or its resources, nor the salary of a State officer, or the process of State courts, or a railroad owned by a State, etc.—*United States v. Railroad Co.*, 17 Wall., 322; *The Collector v. Day*, 11 Wall., 113; *Cooley*, Principles, 61-62. For the same reason a State cannot tax the governmental agencies of the United States. Thus a State cannot tax a bank established by the United States as its fiscal agent, or the bonds or other securities issued under the power to borrow money, or the salaries of Federal officers, or the franchise of a corporation created by the United States, unless permitted to do so by Congress.—*McCulloch v. Maryland*, 4 Wheat., 316; *Weston v. Charleston*, 2 Pet., 442; *Dobbins v. Commissioners*, 16 Pet., 435; *California v. Pacific R. Co.*, 127 U. S. I.*

**McCulloch vs. Maryland* is a leading case, and arose in 1790 from the attempt of the State of Maryland to tax a branch of the United States Bank which had been incorporated and had a branch at Baltimore. The State required all notes to be issued on stamped paper, and the cashier of the bank, refusing to comply with the law, was subjected to a penalty.

Land belonging to the United States lying within a State cannot be taxed by the State; and though such land has been taken up by an individual, it may not be taxed by the State until the full legal right to a patent has been gained by such individual.—*Van Brocklin v. Tennessee*, 117 U. S., 151; *Wisconsin Central R. R. Co. v. Price Co.*, 133 U. S., 496.

The power to tax includes the right to make use of the customary means to enforce payment. Congress provides these means by law and they are to be followed in all essential particulars if the collection is to be valid.—*Cooley*, Principles, 64; *Springer v. United States*, 102 U. S., 586.

Cl. 2. To borrow money on the credit of the United States.

Sec. 139. THE POWER TO BORROW MONEY.—This power being granted in unqualified terms is construed to be given without restriction, and to be co-extensive with all the pecuniary demands upon the government. The public credit may be pledged for a present or future liability; obligations may be issued in any form, including government notes, or bills of credit, to be used as currency. Congress may provide a national currency for the whole country; it may issue its own notes and forbid all other currency; it may create national banks with power to issue notes authorized to circulate as money; it may make its own

In the Supreme Court it was held unanimously that the United States having a right to establish a bank, the bank could establish agencies, and the State could not by the taxing power control or destroy such governmental agency.

issues (greenbacks) legal tender in time of war or peace. The United States has full power, the grant not being restricted as in the case of the taxing power. In *McCulloch v. Maryland*, 4 Wheat., 316, it was held that under this power Congress could incorporate a bank; it being incidental to the grant of power and necessary to make it effective, and being a governmental agency it could not be taxed by the States.—2 Story, Const., Sec. 1055.

Sec. 140. SAME SUBJECT—PAPER MONEY.—The power of the United States to issue non-interest bearing notes, paper money, had been doubted by some and was not exercised until the exigencies of the civil war made extraordinary financial measures necessary. In 1861 Congress authorized the issue of \$50,000,000 in demand notes, as full legal tender in all cases, including customs and public dues. They were issued to pay government obligations and in exchange for coin. These notes exchanged at par value with gold and were never depreciated.—Waldron, *Hand Book on Currency and Wealth*, 1896.

In 1862, Congress authorized the issue of \$150,000,000 non-interest bearing notes of the United States, the same to be a legal tender in payment of all debts, public and private, "except duties on imports and interest on the public debt."*

*The effect of this exception clause was to discredit the very notes or money which Congress was forcing the people to take. It was the workers, the soldiers and farmers who were injured by this action. They had to give their services and their products in exchange for this discredited money,

The State courts having upheld the action of Congress, in 1869 the Federal Supreme Court was called upon to decide whether or not Congress could, under the power to borrow money, issue paper money and thus force a loan from the people. In *Hepburn v. Griswold*, 8 Wall., 603, the various acts issuing the notes were held unconstitutional in part; the court being divided five to three. Ch. J. Chase, who as Secretary of the Treasury had formed the plan for their issue, delivered the majority opinion, declaring that Congress could not make the paper money of the United States legal tender for debts contracted and existing previous to their issue, but that as to debts subsequently contracted they would be valid. This decision was contrary to the wishes of the dominant political party, and steps were at once taken to have it changed if possible. A vacancy having occurred in the court, and another judge added to their number by Congress, the President (Grant) was given to understand that the Senate would only confirm the two new judges if they were in favor of the validity of the paper money

but the bondholders who had bought bonds with these same greenbacks must be paid their interest in gold, which being made superior, advanced in price as compared with the greenback currency. It is clear that a special privilege was granted to the bondholders, and by industriously farming this privilege during the years of the Nation's peril they were enabled to lay aside sufficient to establish themselves in various industries as a monopolistic and plutocratic class, ever ready to come to the assistance of the government when by so doing they can realize a handsome profit. See Corwin Phelps, "Ideal Republic," published by W. F. Reynolds, 267 South Lincoln street, Chicago.

issues. The judges were appointed, and in 1879 the court of nine judges in the *Legal Tender Cases*, 12 Wall., 457, reversed the previous decision and held the issues valid by a decision of five to four. Strong, J., delivered the majority opinion, but did not state the reasons for the finding. Bradley, J., based the action on the war power of Congress, and thus the opinion gained ground that paper money could only be issued in times of war. In 1884 the case of *Juilliard v. Greenman*, 110 U. S., 421, was decided, and holds that Congress may borrow money in this manner as well in times of peace as war, and the power extends to making the notes full legal tender for debts contracted before and after the issue. But individuals by contract may specify the currency in which payment shall be made (as gold, or coined money), and the courts will require the terms of the contract to be observed.—*Bronson v. Rhodes*, 7 Wall., 229; *Trebilcock v. Wilson*, 12 Wall., 687. So the States may decide for themselves in what kind of money their taxes shall be paid, irrespective of legal tender acts. See *Von Holst*, *Const. Law*, 62n.

Cl. 3. To regulate commerce with foreign nations, and among the several States, and with the Indian tribes.

Sec. 141. THE COMMERCE POWER.—One of the palpable weaknesses of the Confederation was the fact that the regulation of commerce was left to the individual States. The various regulations thus established arrayed the States against one another and prevented the carrying out of the commercial treaties with foreign nations made by Congress. One of the

leading purposes for which the framers of the Constitution assembled was to centralize the power over commerce. It was readily agreed that the power to regulate commerce should be given to Congress and denied to the States. But the power given is not plenary, and extends only to commerce with foreign nations, among the several States and with the Indian tribes. Hence Congress has no power to regulate domestic commerce within the several States.—*Veazie v. Moor*, 14 How., 568. By Art I., Sec ix., Cl. 5 and 6, it is provided that “no tax or duty shall be laid on articles exported from any State;” and that “no preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to or from one State be obliged to enter, clear, or pay duties in another.”

Sec. 142. SAME SUBJECT—ITS EXTENT.—Commerce in its broadest sense includes every description of dealing between man and man. But the power to regulate commerce as bestowed on Congress excludes the purely internal commerce of the States. Commerce within the meaning of the grant to Congress includes intercourse between nations and between States for the purpose of trade in all its branches, covering the transportation, purchase, sale and exchange of commodities.—*Pensacola Tel. Co. v. W. U. Tel. Co.*, 96 U. S. 1. Regulating commerce is the prescribing of the rules by which it is governed. Commerce extends to navigation, and the regulation of commerce includes the control of waterways unless exclusively within a single State.—*Gibbons v. Ogden*, 9 Wheat., 1.

The commerce power is construed to be a progressive one and to expand as the agencies by which it is conducted develop. In *Pensacola Tel. Co. v. W. U. Tel. Co.*, supra, it is held that the powers over commerce "keep pace with the progress of the country, and adapt themselves to the new developments of times and circumstances. They extend from the horse with its rider to the stage coach, from the sailing vessel to the steamboat, from the coach and the steamboat to the railroad, and from the railroad to the telegraph, as these new agencies are successively brought into use to meet the demands of increasing population and wealth. They were intended for the government of the business to which they relate, at all times and under all circumstances." Commerce being deemed an important subject of legislation, an intention to promote and facilitate it, and not to hamper or destroy, is naturally to be attributed to Congress.—*Texas & P. R. Co. vs. Interstate Com. Com.*, 162; U. S., 197.

Sec. 143. SAME SUBJECT—WHEN EXCLUSIVE, WHEN CONCURRENT.—The power granted Congress over commerce does not necessarily exclude the States from all authority over the same subjects, provided they do not interfere with the actual legislation of Congress. But where the subject to be controlled is national in character, or of such a nature as to admit of uniformity of regulation, the power of Congress is exclusive, and the States may not regulate the matter, even if Congress has not.—*Welton vs. Missouri*, 91 U. S., 275. As to matters of local importance, though affecting more or less directly foreign and inter-

state commerce, State action is valid until Congress acts. Thus health or quarantine laws, pilots and the policing of harbors are subject to State regulations, unless they run counter to legislation that Congress has enacted.—Cooley, Principles, 70-1. So it is held that a State may require railroad engineers in the State, though engaged in interstate transportation, to be examined for color-blindness.—*Railroad v. N. Y.*, 165; U. S., 628.

Sec. 144. COMMERCE WITH FOREIGN NATIONS.—The propriety of committing all national matters to the general government is obvious, and the power is here exclusive of the States. The power is exercised by making commercial treaties, and by laws regulating the subject.—*Henderson v. Mayor*, 92 U. S., 259.

Commercial Treaties. From time immemorial nations have sought to gain reciprocal advantages in trade with one another. These take the form of commercial treaties; extending favors in return for favors shown us. These treaties as we shall see are made by the President by and with the advice of the Senate. They are carried into effect by the legislation of Congress.—Walker, Am. Law., 137.

Commercial Legislation. Congress has invariably by its legislation endeavored to encourage commercial enterprises and foster home production. Tariff laws enacted under the taxing power have been avowedly to encourage domestic manufactures. Also by registration and navigation laws, requiring all vessels to be registered and only home-owned vessels to engage in

the coast trade, it has given our ship-owners and builders the advantage over foreign competitors. The power extends to the creation of ports of entry and clearance, the making of rules as to the building and outfitting of vessels, providing for the safety of the crew and passengers, the legal rights and duties of sailors, etc. Ports are under the surveillance of custom house officers or collectors, who act under the direction of the Treasury Department. Sworn statements or manifests of the cargo must be furnished the collector of the port before a ship can enter or depart.

Embargo. The power of Congress over commerce has been held to extend to the total prohibition of foreign commerce, with certain nations as a retaliatory measure. This use of the power was upheld on the ground that the purpose was to protect commerce and not to destroy it.—*United States v. Brig William*, 2 Am. Law Jour., 255.

Sec. 145. COMMERCE BETWEEN THE SEVERAL STATES.—This power is barely stated, and we must look to the decisions for its construction. Commerce "Among States" must concern more than one States. It cannot extend to transactions wholly within a State, nor does it extend to agricultural products or manufactured articles in a State which may ultimately become the subjects of commerce among the States.—*Veazie v. Moor*, 14 How., 568-574. Congress cannot legislate to control commerce on a stream whose navigable waters are exclusively within a State, but if it forms with its connecting waters a navigable highway, or though wholly within a State flows into a

lake and thus forms a highway for interstate commerce, Congress may regulate it, and the regulation will extend to the boats which are used exclusively on the river.—The *Daniel Ball*, 10 Wall., 557. In interpreting the anti-trust law of 1890, the court held that while Congress would have the power to suppress monopolies when they operated to control interstate traffic, a mere combination to control the output of an article so indirectly affects commerce as not to be a subject of Federal legislation.—*United States v. E. C. Knight Co.*, 156 U. S. 1.; *Cooley*, Principles, 68-9.

Sec. 146. SAME SUBJECT—THE LEADING CASES.—Among the first cases which raised the question as to what action of the States would interfere with the power of Congress is that of *Gibbons v. Ogden*, 9 Wheat., 1, a truly important and leading case.*

**Gibbons vs. Ogden*—This case arose on an injunction sued out by Gibbons in the State Court of New York to restrain Ogden from navigating the waters of New York Bay with steamboats. The State had given Livingstone and Fulton an exclusive grant to navigate the waters of the State by steam in consideration of their services in making the steamboat practicable. Gibbons was the successor to these rights and sought to restrain Ogden by reason of them. Ogden was engaged in the coasting trade with steamboats licensed and inspected according to the provisions of Congress. The State Court had upheld the grant, but the Federal Supreme Court held the grant unconstitutional and void. The decision was stated by Ch. J. Marshall, and laid broad and firm the power of Congress to regulate or to keep free interstate traffic. It was held that Congress had the exclusive right to control commerce between the States; that the power applied to developed instrumentalities as well as to those in existence at the adoption of the Constitution. As the exclusive grant

The court held that commerce extended to navigation, whether by steam or sail, and that the action by Congress under its constitutional power over commerce precluded the States from any action which would interfere with or annul the acts of Congress.—Black, *Const. Law*, 189.

Another leading case in construing the commerce power is that of *Brown v. Maryland*, 12 Wheat., 419.* By this case it is held that a State cannot tax imports until mingled with the mass of property within the State. That the commerce power protects at least the first sale in the original package by the importer from being controlled by the State's power to tax.

Original Package Cases. Although the Supreme Court had held in the License Cases, 5 How., 504, 600,

would interfere with vessels licensed under the laws of the United States for carrying on the coasting trade in the waters of New York, and would modify or derogate from the powers granted Congress, it was necessarily unconstitutional. The power was to be construed liberally, it extended to navigation, and being vested exclusively in Congress no part of it could be exercised by the States.

**Brown vs. Maryland*—Brown, an importer of goods, was indicted and convicted under a State statute for not taking out a license and paying the license fee required of all importers by the bale. In the Supreme Court the statute was held void, as it was in effect a tax upon imports and would be in derogation of the commerce power. The tax on the business of an importer was in effect a tax on the goods and not on the man. Further, as Congress must have power to authorize the sale of imports when brought into a State, they cannot be taxed while in the hands of the importer and in the original package, as this would limit the power of Congress over commerce.

that where a State imposed a penalty upon the sale of liquors under certain conditions, the laws were valid though the liquor is imported from another State. The law being based for its validity upon the regulation of the health and morals of the people, and the article being considered injurious and not a legitimate article of commerce. Yet under the State (prohibition) regulations which forbade the sale of liquors within the borders of the State, the Supreme Court held that the right to bring a thing (liquor) into a State under the commerce power included the further right to sell it by the consignee while in the original package.—*Bowman v. Chicago, etc., Ry. Co.*, 125 U. S., 465; *Leisy v. Hardin*, 135 U. S., 100. These decisions aroused considerable debate throughout the country. The preservation of local option to the States necessitated a law to cover the matter. Congress therefore provided that all liquors transported into any State or remaining therein for use should, upon arrival in the State, be subject to its laws as though produced there, and should not be exempt, though introduced in the original package.—26 Stat. at Large, 313; *In re Rahrer*, Petitioner, 140 U. S. 545.

In *Robbins v. Taxing District*, 120 U. S. 489, a license tax levied by the city of Memphis on all persons selling goods by samples was held void as to non-residents selling goods by sample to be shipped from another State. The court holding that when goods have become a part of the general mass of property in the State they can be taxed, but a State may not tax the first sale or offer of sale of goods sent from another State.

Sec. 147. THE POWER OF THE STATES OVER COMMERCE.—Such local matters as fall best to the regulation of the various States, and are in no sense national, may, in the absence of the action of Congress, be controlled by the States—*Cooley v. Wardens*, 12 How., 299. But the chief control exercised by the States over this matter arises indirectly from their police power. In the exercise of its power to protect the lives, health and property of its citizens, and to preserve good order and public morals, the State may pass laws and make regulations which, though they effect foreign and interstate commerce, will be upheld by the Federal courts if they are reasonable and do not impose needlessly burdensome conditions and restrictions.—*Railroad Co. v. Husen*, 95 U. S., 465; *Chi Ling v. Freeman*, 92 U. S., 275.

The following have been held as valid regulations on the part of a State:

A tax on commissions of brokers received during the year, though the business of the particular broker contesting was chiefly or wholly with a non-resident firm, and the goods made in another State.—*Ficklen v. Shelby Taxing Dist.*, 145 U. S. 1. (Compare with *Robbins v. Taxing Dist.*, *supra*.)

A law granting to a State corporation the exclusive right to slaughter cattle in and near one of its large cities, and requiring that all animals intended for sale or slaughter be brought to the yards or slaughter houses of such corporation, and permitting the corporation to exact a prescribed fee for such services.—*Slaughter House Cases*, 16 Wall., 36.

A law requiring the taking out of a license as a condition precedent to dealing in intoxicating liquors, whether of home or foreign manufacture.—*License Cases*, 5 How., 504.

Requiring all railroad companies to advertise annually a schedule of tariffs or fares, and adhere to them during the year.—*Railroad Co. v. Fuller*, 17 Wall., 560.

An act forbidding the sale of oleomargarine "colored in imitation of butter," though imported from another State and offered for sale in the original package.—*Plumley v. Massachusetts*, 155 U. S., 461. But the prohibition of the sale of oleomargarine in its pure and unadulterated state, imported and sold in the original package, was held invalid in *Schollenberger v. Pennsylvania*, 171 U. S. 1. Oleomargarine, when sold as such, and not prepared to deceive purchasers, is a legitimate article of commerce.

The police power of the State has been held not to extend to regulate:

Rates charged for interstate commerce, or the mode of doing business.—*State Freight Tax*, 15 Wall., 232.

A State cannot tax the gross receipts from the business of transportation between it and foreign countries or other States.—*Philadelphia S. S. Co. v. Pennsylvania*, 122 U. S., 326.

A statute of Missouri prohibiting the driving of Texan, Mexican or Indian cattle into it during certain seasons of the year, was held invalid under the police power, as it extended to wholesome as well as infected cattle, and was unreasonable.—*Railroad Co. v. Husen*, 95 U. S., 465. So the requirement that all cattle be

inspected before slaughtering is unreasonable, as it prevents the importation of dressed meat from other States.—*Minnesota v. Barber*, 136 U. S., 313.

The State dispensary law of South Carolina was held to be invalid in as far as it prevented individuals bringing from other States liquor for their own use.—*Scott v. Donald*, 165 U. S., 58; *Rhodes v. Iowa*, 170 U. S., 412.

A statute of Illinois forbidding a greater charge for a short than a long haul by rail in the same direction, could not be applied to freight taken up within the State to be transported out of the State.—*Wabash Ry. Co. v. Illinois*, 118 U. S., 557.

A State may not regulate immigration by levying taxes upon the masters or owners of vessels bringing foreigners into their ports. But the United States may do so.—*Henderson v. Mayor of N. Y.*, 92 U. S., 259; *Head Money Cases*, 112 U. S., 580.

Where the right to regulate falls within the exclusive power of Congress, and Congress has not acted, it is equivalent to a declaration that such commerce shall remain free and untrammelled.—*Brown v. Houston*, 114 U. S., 622; *Welton v. Missouri*, 91 U. S., 275.

Sec. 148. SAME SUBJECT—MISCELLANEOUS CASES.—No State has a right to lay a tax on interstate commerce in any form, whether upon the article, upon the receipts derived from the transportation, or on the business of the carrier. But logs lying in a State waiting transportation may be taxed by a State unless transportation has actually begun. A rail-

road running between two points in the same State, though by a loop running into another State, may be taxed on its gross receipts, as this is domestic commerce. But an ocean voyage between two points in the same State is not domestic commerce, as it is conducted on the high seas.—*Lehigh V. Ry. Co. v. Pennsylvania*, 145 U. S., 192.

Though a privilege tax on sleeping cars may not be levied by the State on cars running between States, yet it may tax the capital stock of railways in the State and levy the same by the rate which the number of miles operated in the State bears to the whole number operated; and it may take the daily average of cars within the State as the capital stock of a company, though the cars are owned by foreign corporations engaged in interstate commerce, the cars being considered to have a status in the State.—*Pullman Car Co. v. Pennsylvania*, 141 U. S., 18. In *Maine v. Grand Trunk Ry. Co.*, 142 U. S., 217, an excise tax measured by gross earnings levied by the State upon a foreign corporation engaged in interstate commerce was sustained, though this decision conflicts with a previous decision holding a tax on gross receipts invalid.—135 U. S., 166.

A State may not interfere with the freedom of commerce by telegraph, either under its police or taxing power, so a tax on messages going within and out of the State is invalid.—*Tel. Co. v. Texas*, 105 U. S., 460. But a State may tax the poles and other fixed property of the company having a situs in the State.—*Mass. v. W. U. Tel. Co.*, 141 U. S., 40.

It has been customary to let the states control and manage bridges, dams and ferries, since they are chiefly of local importance and are better directed by local authority than by national; but Congress may interfere when desired and supersede all authority of the States if the commerce power demands it.—*Monongahela Nav. Co. v. United States*, 148 U. S., 312; *Gilman v. Philadelphia*, 3 Wall., 713; *Lake Shore Ry. Co. v. Ohio*, 165 U. S., 365.

The power of Congress over commerce extends to punishing offences committed against commerce or which would defeat or obstruct it. As to punish larceny from a ship; to remove and prevent obstructions to commerce or the mails on highways natural or artificial. It may also appeal to the civil courts to determine the character of the obstructions to its powers and invoke the various remedies of such court to remove them, including an injunction. *In re Debs*, 158 U. S., 564.*

Sec. 149. INTERSTATE COMMERCE ACT.—Congress under its commerce power in 1887 passed the "Interstate Commerce Act," 24 Stat., 379. This Act provides for the establishment of a commission of five members to hear and determine complaints regarding, and to enforce the provisions of the Act. The Com-

*It may be interesting to note how easily courts can find the power to check individuals who attempt to force their rights from the corporations for which they are laboring, but how difficult it is for them to extend the same power to check the lawless obstructions to commerce on the part of monopolies and trusts. See Sec. 145 ante.

merce Commission is given power to prevent unjust discriminations, whether by rebate, special rate, drawback, or other device; to prevent undue preferences being given to a person, corporation or locality, or to a particular kind of traffic; to prohibit a greater charge being made for a "short haul" than for a "long haul," to prevent pooling of freight or earnings, and combinations among carriers to prevent the continuous transportation of goods. The Act applies to all common carriers, by rail or water, transporting persons or property beyond the State. The carriers subject to the Act are required to make annual reports of their business to the Commission, and persons injured by violation of its provisions by carriers are given a right of action for damages.

Sec. 150. COMMERCE WITH THE INDIAN TRIBES.—The power of Congress over commerce with the Indians is plenary. It may pass laws regulating or forbidding it. The power is not limited to State lines, but extends wherever the Indians are found, whether in the reservations, the Territories or the States.—U. S. v. Barnhart, 22 Fed., 285.

The power extends to regulate commerce between the different Indian tribes, and even to the case of an individual Indian who sells liquor to another Indian.—United States v. Shaw-Mux, 2 Sawy., 364.

Cl. 4. To establish a uniform rule of naturalization and uniform laws on the subject of bankruptcies throughout the United States.

Sec. 151.—NATURALIZATION.—The exclusive power over naturalization is vested in Congress by the

word "uniform." Naturalization is defined to be the admission of persons not native to a country to its various political privileges. The States may confer the right to vote—so-called State citizenship—upon persons who are not citizens of the United States. But the power to make an alien, one born subject to another country, a United States citizen, is exclusively the power of Congress.—*Chirac v. Chirac*, 2 Wheat., 259.

Sec. 152. NATURALIZATION LAWS.—By Sections 2165 to 2174 Rev. Stat. of the United States a general law lays down the conditions under which aliens, "being free white persons, and aliens of African nativity and persons of African descent," may become citizens of the United States.* A native of China, of

*The requirements of the naturalization laws are: A continuous residence by the alien within the United States for five years; a declaration on oath at least two years before applying for final papers, and before a court of record, that it is his bona fide intention to become a citizen of the United States, and to renounce forever all allegiance and fidelity to any foreign State, and particularly to the one of which he is at the time a citizen; at the time of his application for final papers before a court of record he must show that the previous conditions have been complied with, that he has behaved as a man of good moral character, and resided at least one year in the State in which such court is held, and declare on oath that he will support the Constitution of the United States, and renounces allegiance to every foreign State. Any hereditary title of the alien must be renounced. If the alien has served in and been honorably discharged from the armies of the United States, he may become a citizen on his petition after a year's residence. Children of naturalized persons, who are under the age of twenty-one when their parents are naturalized, shall be considered citizens of the United States

Mongolian race, may not be naturalized under this law.—*In re Ah Yup*, 5 Sawy., 155. When the Territories are admitted as States in the Union, persons resident therein and not citizens of the United States may be admitted to citizenship. The inhabitants of Florida became citizens of the United States on its cession by Spain to the United States.—*Boyd v. Nebraska*, 143 U. S., 135; *Opinions of the Justices*, 68 Me., 589.

Sec. 153. **BANKRUPTCY.**—The Congress of the United States has full power over bankruptcies if it chooses to use it; but when it has not regulated the subject the States may do so, and their action is valid until replaced by the action of Congress.—*Sturges v. Crowningshield*, 4 Wheat., 122. Congress has passed four different acts in the exercise of this power, the first three have been repealed, and the last is now in force.* The federal power over bankruptcies extends to all classes of persons and to voluntary as well as involuntary bankruptcy.—*In re California Pac. R. R. Co.*, 3 Sawy., 240.

The chief distinction between voluntary and invol-

if dwelling therein. Naturalization confers upon the alien all the rights, privileges and immunities belonging to the natural born citizen.

*The Bankruptcy law now in force was passed in June, 1898, the last act having been repealed in 1878. It was prepared with great care by Judge Jay L. Torrey and carefully considered by the Judiciary Committee of Congress. The aims of the law were to assist honest debtors in making a fair composition with creditors and starting anew free from debt; to enable creditors to compel dishonest debtors to distribute their assets, and by an inexpensive and simple process protect both debtor and creditor in their just rights.

untary bankrupts is in reference to who files the petition in bankruptcy. If the debtor files the petition indicating his desire to surrender his assets and be discharged, it is styled voluntary bankruptcy. If the creditors of the debtor file the petition showing cause why he should be adjudged a bankrupt, it is involuntary bankruptcy.—Cent. Dict., “Bankruptcy.”

It is held that the word “uniform” here does not exclude State action unless Congress has acted. And the law of Congress will be uniform though giving creditors the benefit of exemption laws in the State in which they reside; debts being presumed to be contracted in view of the State exemptions.—*Dozier v. Wilson*, 84 Ga., 301.

State bankruptcy laws, when in force, cannot effect debts previously contracted, as this would impair the obligation of a contract. And State laws can have no application to non-resident creditors unless they voluntarily become parties to the proceedings.—*Brown v. Smart*, 145 U. S., 454.

Cl. 5. To coin money, regulate the value thereof and of foreign coin, and fix the standard of weights and measures.

Cl. 6. To provide for the punishment of counterfeiting the securities and current coin of the United States.

Sec. 154. TO COIN MONEY AND REGULATE THE VALUE THEREOF.—To coin money is to

The law provides several grounds on which creditors may proceed against a debtor, while any person owing debts, save a corporation, may become a voluntary bankrupt, and, by declaring his inability to pay the fee required, may secure the benefits of the act without the payment of the fees otherwise required. To be made a bankrupt involuntarily one must owe \$1,000 or more, and be guilty of some act involving fraud.

stamp metal as a medium of exchange according to fixed standards of value. The power was given to Congress and withheld from the States to insure a uniform and stable currency. Congress alone can regulate the value of coins, that is, establish the standard price for metals of a certain weight and fineness. The States are forbidden "to coin money; emit bills of credit (paper money); or make anything but gold and silver coin a tender in payment of debts." The power of Congress extends to establish mints and assay offices, to determine the proportions of alloy and pure metal in coins, and to establish the ratio between respective metals under the bimetallic system, that there may not be two standards of value.

In 1792 Congress fixed the standard of monetary values, and provided that a weight of $371\frac{1}{4}$ grains of pure silver, called a dollar, should be the unit. As gold was also to be used for money, its relation to silver was fixed at 1 to 15, that is, one weight of gold would be equivalent to fifteen weights of silver. Gold was undervalued at this ratio, and, in 1834, the legal ratio was changed to 1 to 16. At this ratio, and upon a bimetallic basis, all the great mass of public and private debts of our country were contracted. February 12, 1873, the gold dollar, of the same weight and fineness as the then ratio fixed, was made the unit. (\$1 equals 25.8 grains troy.) The same law demonetized silver, that is, provided only for the coinage of subsidiary silver and the trade dollar.* Silver to be coined

* "The reason of the demonetization of the silver dollar was because, on account of its being above par, it had long

under this law was to be a legal tender *only* to the amount of \$5, but in the Revised Statutes this provision was without authority or legality extended to all silver. Thus without consideration, and even without the knowledge of the vast majority of the legislators or their constituents the bimetallic system was replaced by the single gold standard, and all debts present as well as those incurred under the former system are payable in gold. The consequences, as well as the expediency of this legislation has been, and is, the leading issue between the political parties. Though of the greatest moment to the entire nation, because of conflicting individual interests, it must be fought out on political lines.

Sec. 155. WEIGHTS AND MEASURES.—Under this power Congress has legalized the metric system and established the relations between the customary weights and the lineal, surface, and liquid measures. The power so far as exercised is exclusive, but otherwise each State may regulate the standard of weights and measures.—Black, Const. Law., 212.

Sec. 156. TO PUNISH COUNTERFEITING.—This power is necessary to protect the money power. The power of Congress is not exclusive of that of the States, and they may also punish such offenses.—Fox v. Ohio, 5 How., 410.

Cl. 7. To establish postoffices and postroads.

since disappeared from circulation." Von Holst, Const. Law, 124n. This statement, from an otherwise lucid writer, shows one of the many absurd mistakes which are ignorantly or wilfully made in regard to this vexed question.

Sec. 157. POWER OVER THE MAILS.—The power to establish post-offices and post-roads has been interpreted as giving Congress complete and exclusive control over postal matters. The power extends to the organization of the postoffice department, establishing postal routes, securing or erecting suitable buildings for the accommodation of the mails in the various towns and cities, etc. Congress has declared that every road, including railroads, canals, turnpikes, as well as navigable waters, are post-roads during the time the mail is carried thereon.—Rev. Stat. U. S., 3964. Whether or not Congress has the power to construct post-roads, as well as designate the established roads which when used are postal roads, is somewhat of a mooted question. The power has been exercised in a few cases by Congress.—See I. Kent, Com., 268; Story Const., Sec. 1128-50.

Congress may exclude all other agencies from handling mail matter, punish all offenses committed in derogation of its power over the same, and exclude all immoral and indecent matter from the mails.—La. Lottery Case, 143 U. S., 110; *Ex parte Jackson*, 96 U. S., 727.

Cl. 8. To promote the progress of science and the useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries.

Sec. 158. COPYRIGHTS AND PATENTS.—Under this power to promote the progress of science and the useful arts, Congress has passed laws estab-

lishing and controlling Copyrights, Patents, and Trademarks.

A Copyright is simply the right to make copies of a literary production, or a work of the fine arts. It is a grant by the government to an artist, author, or designer, or the assignee, of the exclusive right to multiply copies of his work for a term of years.—*Jeffreys v. Boosey*, 4 House of Lords, Cases, 920.

A Patent (or letters patent) is a monopolistic grant by the government, under seal, securing to an inventor or his assignee for a limited period, upon compliance with certain conditions, and after an *ex parte* hearing, the exclusive right to make, use and vend any new or useful art, machine, manufacture, or composition of matter.—*Grant v. Raymond*, 6 Pet., 241.

A Trade Mark is the arbitrary or fanciful name, device, or symbol adopted for the purpose of identifying the origin or ownership of the article to which it is attached.—*Columbia Mill Co. v. Alcom*, 150 U. S. 463.

The term for which copyrights are granted is twenty-eight years, and an extension or renewal of fourteen years will be granted to the author, his widow or children, if applied for within six months before the end of the first period. Copyrights are under the direction of the Librarian of Congress, and since 1891 are extended to citizens of countries that permit our citizens the like privilege of copyright. (26 Stat., 1106.) But all books must be printed from type set or plates made in this country. The exclusive right to publish one's writings is given only by statute, the common law simply protects writings and letters from unauthorized

publication before their author has given them to the public.—*Wheaton v. Peters*, 8 Pet., 591.*

A patent may be obtained by any person who has invented or discovered any new and useful art, machine, manufacture, or composition of matter, or any new and useful improvement thereof, not known or used by others in this country, and not patented or described in any printed publication in this or any foreign country, before his invention or discovery thereof and not in use or on sale in the United States for more than two years prior to his application. Rev. Stat. U. S., Sec. 4886. The term for which a patent is granted is seventeen years. The Patent Office is under the Department of the Interior; it is in charge of the Commissioner of Patents, from whom the rules of the office and fees charged may be obtained on application. See Rev. Stat. U. S., Secs. 4883-4936, for law regulating patents.

The control of Congress over copyrights and patents is complete and may be exercised by general or special laws. The States may not regulate or restrict the sale

*The fee for recording each copyright is 50 cents; to copyright a book this fee, together with the title page, should be sent to the Librarian of Congress before the publication of same. As soon as published, two copies of the best edition should be mailed to the Librarian prepaid. Each copy must bear the printed notice of copyright, as: Copyright, 18.., by..... By addressing the Librarian of Congress, Washington, D. C., the rules of the office and the fees charged for copies of the record may be obtained. Under the act of March 3, 1891, international copyrights may now be secured in Great Britain, France, Germany, Italy, Spain, Portugal, Belgium, Denmark, Switzerland, Mexico, and Chile. See Rev. Stat. U. S., Secs. 4948-71 for Copyright law.

of patent rights, but under their police power they may regulate the use of patented articles.—*Patterson v. Ky.*, 97 U. S., 501.—See *Tod v. Wick*, 36 Ohio st., 370.

Acts of Congress undertaking to secure exclusive rights in the use of registered trade-marks are declared invalid under this power, and must be limited to the commerce over which Congress has control, if they are to be valid under the commerce power.—*Trade Mark Cases*, 100 U. S., 82. Trade marks are registered in the patent office.—See *Rev. Stat. U. S.*, Secs. 4937-47.

Cl. 9. To constitute tribunals inferior to the Supreme Court.*

Cl. 10. To define and punish piracies and felonies committed on the high seas and offenses against the law of nations.

Sec. 159. PIRACY.—Piracy is robbery, or forcible depredation on the high seas. Anything declared by international law to be piracy will be subject to the penalties fixed by Congress for that crime. But Congress may declare certain offenses to be piracies and punish them as such though they are not piracies under international law.—*United States v. Smith*, 5 Wheat., 153; *The Antelope*, 10 Wheat., 66; *I. Kent Com.*, 183.

Felonies Committed on the High Seas.—The high seas are by the law of nations regarded as free and open to all; they formerly embraced only waters in which the tide ebbed and flowed, but now extend to all waters outside of the limits of a country and not

*See Chapter VII. post.

within the jurisdiction of a State. The high seas begin at a point three miles from the shore line. The Great Lakes are high seas.—United States v. Grush, 5 Mason, 290; United States v. Rodgers, 150 U. S., 249. The ships of a nation are regarded as carrying its jurisdiction with them on the high seas, and offenses committed on board are considered as crimes against the nation to which the ship belongs.—United States v. Palmer, 3 Wheat., 610.

Offenses against the law of nations are such as interfere with the peace and comity between sovereign nations and contravene the established principles of law and order common to all civilized States. Under the power to punish such offenses Congress has passed the "neutrality laws," and laws preventing expeditions to be fitted out against friendly nations.—Pomeroy, Const. Law., Sec. 423.

Cl. 11. To declare war, grant letters of marque and reprisal, and make rules concerning captures on land and water.

Cl. 12. To raise and support armies; but no appropriation of money to that use shall be for a longer term than two years.

Cl. 13. To provide and maintain a navy.

Cl. 14. To make rules for the government and regulation of the land and naval forces.

Cl. 15. To provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions.

Cl. 16. To provide for organizing, arming and disciplining the militia and for governing such part of them as may be employed in the service of the United States, reserving to the States respectively the appointment of the officers and the authority of training the militia according to the discipline prescribed by Congress.

Sec. 160. WAR AND MILITARY POWER OF CONGRESS.—The power of Congress over war and military matters is conferred by the above clauses. In the Prize Cases, 2 Black, 635, war is defined as “that state in which a nation prosecutes its rights by force.” The question in dispute was whether the late rebellion was a war under international law. Acts of hostility had been going on between North and South, and a blockade declared, though Congress was not in session and had not declared war to exist. The court found that war may exist, though not declared, by reason of hostile acts of a foreign power, or armed insurrection, and may be recognized and repelled by the President as commander-in-chief of the army and navy. When war exists the federal government has all the power of a sovereign nation at war, it is held to have power to acquire territory by conquest or treaty.—*Insurance Co. v. Canter*, 1. Pet., 511. And it may establish military tribunals in territory in a state of war, and provide provisional courts in conquered territory.—*Jecker v. Montgomery*, 13 How., 498. As a war measure the slaves of persons in rebellion may be given their freedom.—*Slabach v. Cushman*, 12 Fla., 472; *The Grape Shot*, 9 Wall., 129. But the war power is subject to the provisions of the bill of rights, and also to the guaranties of the Constitution to individuals when the civil courts are exercising their functions.—*Ex parte Milligan*, 4 Wall., 2.

By letters of marque and reprisal is meant the power to commission private vessels to attack the commerce of the enemy as a war measure or to obtain redress for

the nation. These vessels are known as privateers, and this method of warfare is called privateering. By an international compact many of the leading nations have renounced privateering. Neither the United States nor Spain were parties to the compact, so that each may commission privateers, but neither nation did so in the late war.

Congress must make the rules concerning captures before the right of forfeiture exists for a private citizen, and the right to seize and confiscate the property of belligerents extends to the property of persons in rebellion.—*Brown v. U. S.*, 8 Cranch., 110; *Miller v. U. S.*, 11 Wall., 268.

Sec. 161. SAME SUBJECT—TO RAISE AND SUPPORT ARMIES.—This power is subject to the restriction that no appropriation of money to this use shall be for longer than two years. This limitation is to prevent the executive from maintaining armies without the periodical consent of Congress. The power includes the right to maintain schools of instruction for officers, manufacture arms, etc. The size of the army, and the mode of securing enlistments is for Congress to determine. All persons capable of performing military service may be compelled to do so by enlistment or conscription laws.—*Cooley*, Principles, 3d ed., 99; *Kneedler v. Lane*, 45 Pa. St., 238.

The power of Congress to provide and maintain a navy is plenary, and in regulating the land and naval forces Congress may establish rules, as for punishing officers in the army and navy, for holding courts-martial, etc. But such action must not contravene the

Constitutional power of the President as commander-in-chief.

Sec. 162. SAME SUBJECT—USING THE MILITIA.—Militia means the volunteer forces of the State as distinguished from the regular army. They are enrolled and officered, but are State forces until called into the service of the United States. Congress has power to provide for calling forth the militia to execute the laws of the Union, suppress insurrections, and repel invasions. These purposes exclude the militia from being called to do service outside of the limits of the United States. But it is held that Congress may confer the power to call out the militia upon the President, and he has then exclusive authority to determine the exigency which shall require their being called out, and no court can question his decision.—*Houston v. Moore*, 5 Wheat., 1. And the States may aid in calling forth the militia but cannot resist; the President may make the requisition upon the State executive or directly to the militia officers.—*Martin v. Mott*, 12 Wheat., 19.

Congress provides for the arming, organizing and disciplining of the militia, but the appointment of officers is reserved to the States. The training of the militia in accordance with the discipline prescribed remains in the States, and they have the further power to prevent if they desire all except the regular militia and the military forces of the United States from forming companies and drilling or parading with arms within the State.—*Presser v. Illinois*, 116 U. S., 252. In the service of the Union the militia are subject to

the orders of the President as well as any officer of the army who outranks their own officers.—Black, Const. Law, 224.

Cl. 17. To exercise exclusive legislation in all cases whatsoever, over such district (not exceeding ten miles square) as may, by cession of particular States and the acceptance of Congress, become the seat of government of the United States, and to exercise like authority over all places purchased, by the consent of the Legislature of the State in which the same shall be, for the erection of forts, magazines, arsenals, dockyards and other needful buildings.

Sec. 163. POWER OVER CEDED DISTRICTS.—This clause was designed to give security and respectability to the federal government. It gives permanence as well as independence to the national capitol.

The District of Columbia was ceded to the United States and accepted by Congress, and many smaller districts have been purchased by the federal government or reserved from the public domain. This territory being under the exclusive legislation of Congress, and separate and distinct from the States, makes the position of the inhabitants thereof anomalous. They are citizens of the United States, have to pay taxes, serve in the militia, etc., but are not represented in Congress and cannot vote for President. The palpable contravention of the principle of self-government in these cases is excused on the ground of their being necessary exceptions.—*Loughborough v. Blake*, 5 Wheat., 317; *Von Holst*, Const. Law, 172-3.

Congress has exclusive jurisdiction over such territory except in cases where the territory has been secured by methods other than those mentioned in this

clause, or the States have reserved the right to serve judicial process, tax railroads, and other rights not inconsistent with the use of the territory by the United States.—*Fort Leavenworth R. R. Co. v. Lowe*, 114 U. S., 525; *Benson v. United States*, 146 U. S., 325. The inhabitants of such ceded districts are no longer citizens of the State and can exercise no civilian political functions.—*Soldier's Home Case*, 19 Ohio, St., 306.

Cl. 18. To make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States, or in any department or officers thereof.

Sec. 164. IMPLIED POWERS OF CONGRESS.
—The above clause is the foundation of the so-called implied powers of Congress. It is sometimes called the "elastic clause," and while it does not enlarge any powers specifically granted, nor confer any new powers, it does fill up, and round out, and make effective in detail the powers which are specifically granted. It is claimed that if this clause had been left out of the Constitution the express grant of powers would have included the powers necessary to carry them into effect, as a grant is always construed to mean something. The clause was to remove uncertainty and guard against a failure of express powers by reason of the inability to make use of the necessary and suitable means at any particular period for their exercise.—2 Story, Const., Secs. 1239-43; Cooley, Principles, 105.

The clause is a troublous one, since in its construction it may be made too narrow or too broad. There is no dispute that it was to remove the necessity of

enumerating the specific things that Congress might do in exercising the powers granted. But some have contended that the expression "necessary and proper for carrying into effect," etc., applies only to such as are necessary and indispensable to the powers granted, and that Congress has no choice or discretion as to means. The other view, and the one which has prevailed is, that Congress may use any means appropriate to the end to be effected, and may choose the instrumentality which it considers best adapted to carry out the express powers, and is not limited to those which are strictly indispensable. Congress may judge in the first instance as to what is thus incidental and necessary to exercise its powers, but the courts finally determine the question when it properly comes before them. —*McCulloch v. Maryland*, 4 Wheat., 316; *Hepburn v. Griswold*, 8 Wall., 603; *Martin v. Hunter*, 1 Wheat., 304; *Legal Tender Cases*, 12 Wall., 457.

McCulloch v. Maryland is the leading case, and upheld the power of Congress to establish a national bank as a beneficial instrumentality to effect the government's fiscal affairs. Ch. J. Marshall holding, "that any attempt to prescribe the means by which the government should at all times execute its powers, or to limit it as to those, without which the power would be nugatory, would be to hamper and obstruct the powers of government." All means fairly adapted to carry out a specific grant are constitutional, and Congress is the sole judge of what is proper within this limitation and not otherwise forbidden.

Under this clause Congress has power to punish

offenses against the various federal agencies, to improve rivers and harbors, to lay an embargo, to incorporate a bank, to acquire territory, give a preference to the demands of the United States in a bankrupt's estate, prevent the obstruction of navigation and commerce between States or the transportation of the mails, make its treasury notes legal tender, and forbid federal officers and employes being assessed for political purposes.—Black, *Const. Law*, 236-7; *McCulloch v. Maryland*, 4 Wheat., 316; *United States v. Fisher*, 2 Cranch., 358; *United States v. Coombs*, 12 Pet., 72; *In re Debs*, 158 U. S., 564; *Legal Tender Cases*, 110 U. S., 651; *United States v. Curtis*, 106 U. S., 371; *Cooley, Principles*, 107.*

*In treating the enumerated powers the text included a consideration of the cases which are based to some extent on implied powers. The purpose being to give the scope of each specific grant of power. In some instances the courts do not say to which grant of power the implied power is incident.

CHAPTER V.

POWERS DENIED TO THE UNION AND THE STATES.

Section IX. Power Denied to the United States.

CL. 1. The migration or importation of such persons as any of the States now existing shall think proper to admit shall not be prohibited by the Congress prior to the year one thousand eight hundred and eight; but a tax or duty may be imposed on such importation not exceeding ten dollars for each person.

Sec. 165. SLAVES.—The first clause of section nine embraces the compromise made by the Convention on the slavery question. The clause in effect legalized slavery by forbidding Congress to interfere with the introduction of slaves into States then existing prior to 1808.*

*That the liberty-loving and progressive men who framed the Constitution should not have had the courage to stamp out slavery must ever be a cause of regret. In their defense it may be said that civilization had not reached the plane that it now has in regard to human slavery, and that Anglo-Saxons, while ever willing to battle with Spartan courage for their own liberty, are not solicitous as to the liberty of other races. Some men in the North and some in the South were bitterly opposed to allowing slavery to continue under the new government. But the money-power—then the slaveholding interests—triumphed, and slavery became indigenous to the United States.

The civil war has put an end to literal slavery, and the legal recognition of a human being as chattel property of another human being. But in another form slavery still exists. A man, black or white, is nominally free to go where he pleases,

Sec. 166. HABEAS CORPUS.—This is a judicial writ or order issued by a court requiring the body of a person imprisoned or restrained to be brought into court that the legality of the imprisonment may be investigated and determined. This right of an individual to security from arbitrary imprisonment was secured in England in 1679, and is one of the many charter liberties incorporated from English law.

This privilege may be withheld in only two cases, rebellion and invasion, when the common danger is paramount to the right of the individual.

At the outbreak of the rebellion the Attorney General (Bates) was of the opinion that the President could

work for whom he chooses, and to refuse to work if the wages paid are not satisfactory. But the freedom is ever dependent on his possessing the necessities of existence, and these necessities are controlled and monopolized by corporations and trusts whose powers are practically unlimited; hence has arisen industrial slavery, more subtle, but just as oppressive and galling to the individual as the former system.

Rights involve duties. True liberty results as much from restraints imposed as from rights acknowledged. Free opportunity is really anarchy if rights inherent in others are not respected. To have slaves the planters claimed as a right; but not to enslave men is a duty imposed by the fundamental law of a people demanding their own independence. The members of the Convention claimed the right to be free, yet by legalizing slavery they denied the right of a people to be free.

In our day citizens, or aggregations of persons, demand the right to incorporate, to combine, and to form trusts to get the best of other citizens. or control production and distribution, regardless of the rights of individuals and society as declared in the fundamental principles of social organization.

The inalienable rights of individuals are being violated

suspend the writ. But the better opinion is held to be that the suspension is a legislative act, and can only be ordered by Congress, or by the President when authorized by Congress. The President was authorized in 1863 to suspend the writ in the whole or any part of the Union which he deemed advisable. This was done, and the law was held constitutional, but to be construed strictly according to its verbal tenor. The law authorized the suspension of the writ, but this was held not to authorize an arrest without legal cause.—*Ex parte Milligan*, 4 Wall., 133.

Cl. 3. No bill of attainder, or *ex-post-facto* law, shall be passed.

constantly by the monopolization of the mediums of production and distribution, and the results of such violations are just as inimical to the freedom of individuals and the liberties of society as political slavery.

That the State has the power to secure and protect the rights of its citizens in the industrial sphere cannot be doubted. It is an implied power which must be exercised if the express power to secure the general welfare is to mean anything. Whether the power shall be exercised by limiting, regulating and taxing the monopolistic holders of productive agencies, or by complete absorption of the agencies of production and distribution as governmental functions is yet to be decided. One or the other must be done, or we may expect to see evolved a few gigantic monopolies, controlled by a clique of individuals, with coercive powers over individuals and the Nation greater than that of the Caesars of Rome or the King-makers of England. If the industrial world should come to this pass it will be necessary to begin over again the struggle for liberty which the race has gone through in overthrowing the despotism of political monopoly.

Cl. 2. The privilege of the writ of habeas corpus shall not be suspended unless when, in case of rebellion or invasion, the public safety may require it.

Sec. 167. BILL OF ATTAINDER.—In English law a bill of attainder was an act of Parliament declaring a person guilty of crime and pronouncing a sentence of death against him with forfeiture and corruption of blood, that is, destroying the inheritable quality of the person's blood. The bills were usually employed against political offenders at the instigation of the king, and the action taken was unjust and tyrannical. Both the federal and State governments are forbidden to pass bills of attainder, as it was seen that they were capable of being used as instruments of oppression. Bills of pains and penalties were similar to bills of attainder, except that the death penalty was not imposed. These are included in the inhibition, and the legislatures have no power to punish crimes by direct legislative action.—*Fletcher v. Peck*, 6 Cranch, 138; *Ex parte Garland*, 4 Wall., 333. It is held that the States may not indirectly pass such bills, as by providing a test oath for the exercise of a calling or profession, in which the individual would have to testify that he had not been guilty of disloyal acts toward the national government in the past, as this legislation was designed to exclude those who were guilty of the conduct specified, and such persons would therefore be legislatively punished without trial.—*Ex parte Garland*, *supra*; *Cummings v. Missouri*, 4 Wall., 227; *Cooley*, Principles, 311.

Sec. 168. EX POST FACTO LAWS.—Literally speaking, an ex post facto law is one passed "after the fact," that is, later in time than the deed or act to which it relates. Unrestricted the term would include all

retroactive legislation in civil as well as criminal cases; but it was early decided that the term as employed in the Constitution is limited exclusively to laws of a criminal nature. The same case specifying *ex post facto* laws as follows:

1. One which makes an act done before the passing of the law and which was innocent when done, criminal, and punishes it as such.

2. One that aggravates a crime, or makes it a greater offense than it was when committed.

3. One that changes the punishment, or inflicts a greater punishment than the law imposed when the crime was committed.

4. One that alters the legal rules of evidence, and receives less or different testimony in order to convict, than the law required when the offense was committed.

—*Calder v. Bull*, 2 Dall., 386.

To these Judge Cooley adds the following:

5. "Every law which, assuming to regulate civil rights and remedies only, in effect imposes a penalty or the deprivation of a right for something which when done was lawful.

6. "Every law which deprives persons accused of crime of some lawful protection to which they have become entitled; such as the protection of a former conviction or acquittal, or of a proclamation of amnesty."

—*Principles*, 3d ed., 313.

The following are held not to be *ex post facto* laws:

One that changes the punishment by lessening it, or affects merely prison discipline.—*Hartung v. People*, 22 N. Y., 95; *Clarke v. State*, 23 Miss., 261.

One that changes the practice but does not deprive the accused of his substantial rights, or which affects the privilege of mere technical objections.—*Duncan v. Missouri*, 152 U. S., 377; *Cook v. United States*, 138 U. S., 157; *Commonwealth v. Hall*, 97 Mass., 570.

One providing that the punishment of future offenses shall be graduated according to the past conduct of the accused, and be more severe in case of previous conviction.—*Commonwealth v. Graves*, 155 Mass., 163; *Black*, Const. Law, 598-9.

Cl. 4. No capitation or other direct tax shall be laid, unless in proportion to the census or enumeration herein before directed to be taken.*

Cl. 5. No tax or duty shall be laid on articles exported from any State.**

Cl. 6. No preference shall be given by any regulation of commerce or revenue to the ports of one State over those of another; nor shall vessels bound to or from one State be obliged to enter, clear, or pay duties in another.***

Cl. 7. No money shall be drawn from the treasury but in consequence of appropriations made by law; and a regular statement and account of the receipts and expenditures of all public money shall be published from time to time.

Sec. 169. APPROPRIATIONS.—The control over grants of money to the needs and expenses of the government is in the hands of the legislature. Appropriations are usually made each year for the current expenses and for such national improvements as Congress desires to make. Appropriations are made without regard to the receipts of the government, and this results from time to time in a deficit which has to be

*Treated under the taxing power, ante, section 137.

** ***Noticed under the commerce power.

met by borrowing money on the credit of the government.—See Von Holst, *Const. Law*, 127-135.

Cl. 8. No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them shall, without the consent of the Congress, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state.

Sec. 170. **TITLES OF NOBILITY, PRESENTS, ETC.**—This clause was to insure the absolute political equality of citizens under the government, as well as protect us from foreign influence by bribes appealing to the vanity of our officers. The framers of the Constitution realized that nobility is not to be conferred by law, that it is an inherent quality; and that the attempted preferment of certain men and their heirs by law was a signal failure.*

Section 10. Powers Denied to the States.

Cl. 1. No State shall enter into any treaty, alliance, or confederation, grant letters of marque and reprisal, coin money, emit bills of credit, make anything but gold and silver coin a tender in payment of debts, pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or grant any title of nobility.

Sec. 171. **LIMITING THE POWER OF THE STATES.**—There are two classes of prohibitions to be noticed: 1, Those directed both to Congress and to the States, and, 2, those laid upon the States alone. Of the powers denied, a number have been considered in

* "The Nobility! That is to say, two classes of men—the one for grandeur, the other for debasement; the one for tyranny, the other for servitude! The Nobility! Ah! The very word is an insult to the human race!"—Vergniaud.

treating the powers of Congress and will not be adverted to here.

Bills of Credit.—These are bills issued by the State, designed to circulate as money on the credit of the State and in the ordinary uses of business.—*Craig v. Missouri*, 4 Pet., 410. But the bills of a bank chartered by the State, and whose stock is owned by the State are not bills of credit; nor are coupons of State bonds, though made receivable for taxes.—*Briscoe v. Bank*, 11 Pet., 257; *Poindexter v. Greenhow*, 114 U. S., 270.

Sec. 172. LAWS—IMPAIRING THE OBLIGATION OF CONTRACT.—This prohibition applies to the States alone and is not extended to the federal government. The inhibition was intended to prevent the States from repudiating their debts, but it has been construed to include every enforceable contract made by individuals or States, executed as well as executory, express or implied, including contracts between States. But the contract must be one which is enforceable by legal process.—*Green v. Biddle*, 8 Wheat., 1; *Fletcher v. Peck*, 6 Cranch, 87. The provision is held not to extend to protect statutory grants of licenses or exemptions, the tenure of public offices, judgments, or the contract of marriage from impairment by law.—*Black*, Const. Law, 612-615; *Stone v. Mississippi*, 101 U. S., 814; *Butler v. Pennsylvania*, 10 How., 402; *Garrison v. City of N. Y.*, 21 Wall., 196; *Cronise v. Cronise*, 54 Pa. St., 255.

In 1819 the courts were called upon to decide whether a charter granted to a corporation was protected

by this clause. In the case of *Dartmouth College v. Woodward*, 4 Wheat., 519, this question was decided, and the court held that a charter is a contract within the meaning of the Constitutional provision and when once granted by a State it is made irrevocable by the legislature.*

The principle decided in the *Dartmouth College* case was applied to all business corporations, and while modified in various ways it is still affirmed by the courts. The principles which modify the doctrine are:

1. All charters are to be strictly construed. So where a grant is made to one corporation to build a bridge or take toll, and later a similar grant is made to another corporation, in the absence of an express grant of the exclusive privilege to the first corporation, the second grant will be valid even though it injures the business of the first corporation.—*Charles River Bridge v. Warren Bridge*, 11 Pet., 420. If the exclusive privilege is granted this becomes a part of the contract and cannot be impaired.—*New Orleans Gas Co. v. I. a. Light Co.*, 115 U. S., 650.

2. Corporate franchises, including exclusive ones, may be taken under the State's right of eminent domain, provided the required compensation is given.—*Cooley*, Principles, 337-38.

3. Legislatures may always reserve the right to alter, amend, or repeal a charter, and this is invariably done

**Dartmouth College Case*: The charter had been derived by the College from Royal authority, and the Legislature of New Hampshire wished to change it, but was prohibited from doing so under the provision against impairing the obligation of contract.

either by the legislature or the Constitution of the State.

4. A State cannot divest itself by contract or otherwise of its essential powers over all public matters, and of its powers to regulate the business of corporations conducting enterprises of a public nature. In *Munn v. Illinois*, 94 U. S., 113, it is held that in the case of an individual proprietor of a grain elevator, the business is so far of a public nature that the State may regulate the charge of the service, the court holding that the furnishing of the necessities of life has always been subject to public control. So the rates and charges of transportation companies may be regulated by the State, though the companies are given this right in their charters.—*Stone v. Farmers' Loan Co.*, 116 U. S., 307.

5. Another check which the States have on chartered corporations is under their police power. The public health, safety and morals are superior, and will justify an interference with the franchise of corporations by regulations or otherwise.—*Beer Co. v. Massachusetts*, 97 U. S., 25. In this case a statute of the State which forbade the manufacture and sale of malt liquors was upheld, though it impaired the charter of the beer company, the court holding that the right given by the charter was not more sacred than a private citizen would have. See *Fertilizer Co. v. Hyde Park*, 107 U. S., 667.

Municipal corporations are not included with the private and quasi-public corporations, whose charters are contracts protected by this clause. They are State

agencies created for convenience in government and their powers and privileges are subject to recall at all times.—*East Hartford v. Hartford Bridge Co.*, 10 How., 511; *Essex Board v. Skinkle*, 140 U. S., 334.

“The obligation of a contract is the binding force on the party making it, which the law at the time recognizes, and for the disregard of which it gives a remedy.”—*Cooley*, Principles, 330.

Sec. 173. SAME SUBJECT—IMPAIRMENT OF THE OBLIGATION.—Among the legislative acts which would impair the obligation of a contract are: Statutes relieving one party of his legal undertaking, or depriving the other party of the fruits of the undertaking, as the law imposes upon a person undertaking to do a thing the duty of performing it. But such undertaking must be legal and upon a consideration or it will not be enforced. So any law which enlarges or abridges the intention of the parties, or which postpones or hastens the time of performance, or which makes the promise invalid, or puts new terms into it, impairs its obligation.—*Black*, Const. Law., 607; *Planters' Bank v. Sharp*, 6 How., 301.

A distinction is to be made between impairing the obligation of a contract and impairing the remedy for a breach of contract. While the legislature cannot abolish all remedies on a contract, it may change or alter the remedy providing the contract is not left unenforceable. Thus a change in the statute of limitations does not impair a contract.—*Sturges v. Crowninshield*, 4 Wheat., 122. But such statute must leave a reasonable time within which to bring an action.—

Mitchell v. Clark, 110 U. S., 633. So the abolition of imprisonment for debt, though made to apply to antecedent contracts, affects only the remedy and does not impair the obligation of the contract.—*Ogden v. Saunders*, 12 Wheat., 213.*

Cl. 2. No State shall, without the consent of Congress, lay any imposts or duties on imports or exports, except what may be absolutely necessary for executing its inspection laws; and the net produce of all duties and imposts laid by any State on imports or exports shall be for the use of the treasury of the United States; and all such laws shall be subject to the revision and control of the Congress.

Cl. 3. No State shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war in time of peace, enter into any agreement or compact with another State or with a foreign power, or engage in war, unless actually invaded, or in such imminent danger as will not admit of delay.

Sec. 174. RESTRICTION AS TO TONNAGE, ETC.—These restrictions on the power of the State are demanded because of the federal character of the Union, as well to prevent a clash between the two authorities as to insure uniform and single action. Ton-

*It is not attempted to give all the provisions relating to this subject of impairing the obligation of contracts at this time. In Number 4 of the Home Law School Series, under the subject of Contracts, it will be dealt with more fully.

There is some dispute as to whether Congress is restrained from impairing the obligation of contract. That Congress has done so is not to be disputed; the legal tender acts making treasury notes pay pre-existing debts is an example, so the demonetization of silver is an example of appreciating pre-existing debts. The better opinion in view of these facts is that Congress is not restrained, and that the remedy for such action by Congress is political and not judicial. *Mitchell vs. Murphy*, 110 U. S. 633.

nage duty is a tax laid on a vessel for the privilege of navigation, and would prove, if exercised by the States, a power to regulate commerce. Wharfage dues may be levied in proportion to tonnage.—*Packet Co. v. Keokuk*, 95 U. S., 80.

Sec. 175. IMPLIED RESTRICTIONS.—Without being expressly stated the power of legislation, State and National, is limited in the following respects: 1. The power to legislate cannot be delegated, as to another department of government. This trust is confided to the the legislative body alone.—*Cooley*, *Const. Lim.*, 6th ed., 137-146. 2. A legislature cannot limit by any action the power of its successors, as by passing an irrevocable law.—1 *Bl. Com.*, 90; *Illinois Cent. R. R. Co. v. Illinois*, 146 U. S., 387. 3. Legislation is to redound to the public good, and not to the preferment of individuals.—*Cooley*, *Principles*, 3d ed., 112.

CHAPTER VI.

THE EXECUTIVE DEPARTMENT.

Sec. 176. The executive officer of the Union and the head of the executive department is called the President. This term signifies a presiding or controlling officer, and had been used to designate the chief executive officer in several of the States after 1776. In the Convention there was some dispute as to the term for which the President should be chosen; some favored a life term while others would have limited the term to one year. Four years was the compromise agreed upon.

ARTICLE II.

Section 1. President and Vice President.

Cl. 1. The executive power shall be vested in a President of the United States of America. He shall hold his office during the term of four years, and, together with the Vice President, chosen for the same term, be elected as follows:

Cl. 2. Each State shall appoint, in such manner as the legislature thereof shall direct, a number of electors, equal to the whole number of Senators and Representatives to which the State may be entitled in the Congress; but no Senator or Representative, or person holding an office of trust or profit under the United States, shall be appointed an elector.

Cl. 3.* The electors shall meet in their respective States, and vote by ballot for two persons, one of whom at least shall not be an inhabitant of the same State with themselves. And

*This clause has been altered by the XII. Amendment. See Ch. IX., post.

they shall make a list of all the persons voted for, and of the number of votes for each; which list they shall sign and certify, and transmit, sealed, to the seat of the government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted. The person having the greatest number of votes shall be the President, if such number be a majority of the whole number of electors appointed; and if there be more than one who have such majority, and have an equal number of votes, then the House of Representatives shall immediately choose by ballot one of them for President; and if no person have a majority, then, from the five highest on the list, the said House shall in like manner choose the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote; a quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. In every case, after the choice of the President, the person having the greatest number of votes of the electors shall be the Vice President. But if there should remain two or more who have equal votes, the Senate shall choose from them by ballot the Vice President.

Cl. 4. The Congress may determine the time of choosing the electors, and the day on which they shall give their votes, which day shall be the same throughout the United States.

Cl. 5. No person except a natural-born citizen, or a citizen of the United States at the time of the adoption of this Constitution, shall be eligible to the office of President; neither shall any person be eligible to that office who shall not have attained to the age of thirty-five years, and been fourteen years a resident within the United States.

Cl. 6. In case of the removal of the President from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the Vice President; and the Congress may by law provide for the case of removal, death, resignation, or inability, both of the President and Vice President, declaring what officer shall then act as President; and such officer shall act accord-

ingly, until the disability be removed or a President shall be elected.

Cl. 7. The President shall, at stated times, receive for his services a stated compensation, which shall neither be increased or diminished during the period for which he shall have been elected, and he shall not receive within that period any other emolument from the United States, or any of them.

Cl. 8. Before he enter on the execution of his office he shall take the following oath or affirmation:

"I do solemnly swear (or affirm) that I will faithfully execute the office of President of the United States, and will, to the best of my ability, preserve, protect and defend the Constitution of the United States."

Sec. 177. ELECTION, QUALIFICATIONS, ETC., OF PRESIDENT.—Section 1, of Article II. prescribes the method of electing the chief executive officer. By the Constitution the election was intended to be an indirect one by electors chosen in the several States who should meet and independently select the executive officer. Custom has changed this, and, at the same time the people vote for electors, which is the universal method of choosing these officers, they vote for designated persons for President and Vice President, and though the electors meet and go through the formality of voting, their decision is always in accordance with the platform on which they were elected.

Congress has fixed the first Tuesday after the first Monday in November of every fourth year as the time of choosing Presidential electors, and this is known as a Presidential election. The electors do not meet until the first Wednesday in December to cast their votes as directed by the Constitution.

It was early found that the plan of having the Vice President of a different political party from the Presi-

dent, which was the result of the method of election, was not consistent with harmonious executive action, and the XII. Amendment was adopted providing that the electors should vote in distinct ballots for President and Vice President, thus insuring that both shall belong to the same political party.

Congress has provided by Act of 1886, 24 Stat. at Large, 1, that in case of the disability, or removal of both President and Vice President for any cause the office shall devolve on the following officers in the order stated: Secretary of State, Secretary of the Treasury, Secretary of War, Attorney General, Postmaster General, Secretary of the Navy, Secretary of the Interior. But any such officer must be constitutionally eligible and be confirmed by the Senate.

Section 2. Powers of the President.

Cl. 1. The President shall be commander-in-chief of the army and navy of the United States and of the militia of the several States when called into the actual service of the United States. He may require the opinion in writing of the principal officers in each of the executive departments, upon any subject relating to the duties of their respective offices; and he shall have power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment.

Sec. 178. COMMANDER-IN-CHIEF.—As the executive head of the Union, the President has chief command of the military forces of the Nation. This power is construed to make him the executive head rather than the actual military commander of the forces in the field. His direction and power is exercised through the War Department and not directly over the troops.—United States v. Eliason, 16 Pet.,

291. The powers of the President in this regard are at all times subject to the law of the land, and any action not warranted by law will be void.

The "principal officers in each of the executive departments," whose opinions the President may require in regard to the duties of their respective offices, form what is known as "the Cabinet." The heads of the Departments, of which there are now eight, are customarily summoned in a body to advise the President.* Being executive agents, the official acts done by the heads of departments are regarded as the acts of the President, and for which he is politically responsible. But for executive acts the President is not to be called to account save by impeachment.—*Wilcox v. Jackson*, 13 Pet., 498; *Marbury v. Madison*, 1 Cranch, 137; *Durand v. Hollis*, 4 Blatch., 451. Where duties are specifically imposed on the heads of departments they are responsible.—*Kendall v. United States*, 12 Pet., 524.

The pardoning power of the President extends only to offenses against the United States, and does not apply to impeachments. A pardon relieves the person from all consequences of the criminal act, save where rights of third persons to property or a share in a fine have become vested.—*Osborn v. United States*, 91 U. S., 474. The pardon may be given to a person convicted; to a described class of persons before conviction; to all persons guilty of a specified offense. In the first case the pardon takes effect upon delivery, in the second case the pardon removes the possibility of

*The Department of Agriculture was added as an executive department in 1889.

prosecution or conviction, and in the third case the pardon is effective from the signing of the general proclamation.—United States v. Norton, 97 U. S., 164; Cooley, Principles, 115-116.

Cl. 2. He shall have power, by and with the advice and consent of the Senate, to make treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the advice and consent of the Senate, shall appoint ambassadors, other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by law vest the appointment of such inferior officers as they think proper in the President alone, in the courts of law, or in the heads of departments.

Cl. 3. The President shall have power to fill up all vacancies that may happen during the recess of the Senate by granting commissions, which shall expire at the end of their next session.

Sec. 179. POWER OVER TREATIES.—The making of treaties is usually an executive function solely, but as a check on the executive the Senate is required to concur in the exercise of the power. And where the treaty requires the appropriation of money to carry it out the lower house, by its sole power over appropriations, has a secondary control over the treaty.

A treaty is a compact between two sovereignties, and not a legislative act. Though by Article VI., cl. 2, treaties are given the authority of laws, yet unless the treaty itself prescribes a rule by which private rights are to be determined, it is a mere compact, and cannot be enforced by the courts until the legislature by its

action has made it operative.—Head Money Cases, 112 U. S., 580; *Foster v. Neilson*, 2 Pet., 253.

Treaties that are operative are a part of the supreme law of the land and overrule conflicting laws of an earlier date, and all contravening State action. But a treaty being of no greater validity than other acts of Congress, it may be superseded by any subsequent action of Congress inconsistent with it.—*Cherokee Indians*, 11 Wall., 616.

Sec. 180. POWER OVER APPOINTMENTS.—The power of the President to appoint civil officers is one of great importance, and it was a wise check upon the power that such appointments should be ratified by the Senate. The question has arisen: Does the power to appoint include the power to remove, and is it in the power of the President to remove officers without the consent of the Senate? The better opinion seems to be that the President may remove officers without the consent of the Senate.—Black, *Const. Law*, 113; *Pomeroy*, *Const. Law*, Secs. 647-661. Congress, however, in 1867, by the Tenure of Office Act (*Rev. Stat. U. S.*, Sec. 1767), provided that every civil officer should hold until removed with the consent of the Senate, or until the appointment of a successor with the consent of the Senate. This act was repealed in 1887 without having been passed upon by the Supreme Court. The question is still a debatable one. Inferior officers Congress may authorize the heads of departments to appoint, and these officers it may protect from removal without infringing upon the executive power.—*United States v. Perkins*, 116 U. S., 483. In 1883 Con-

gress, by the Civil Service Act, classified the various official positions under the government, and about 80,000 of the 179,000 persons in the Executive Civil Service are subject to a competitive examination under the rules of the Civil Service Commission, and are not to be removed except for just cause and upon written charges filed with the head of the department, and upon giving the accused full notice and opportunity for defense.*

Section 3. Duties of the President.

He shall from time to time give to Congress information of the State of the Union, and recommend to their consideration such measures as he shall judge necessary and expedient; he may, on extraordinary occasions, convene both houses, or either of them; and in case of disagreement between them, with respect to the time of adjournment, he may adjourn them to such time as he shall think proper. He shall receive ambassadors and other public ministers; he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States.

Sec. 181. EXECUTIVE DUTIES.—The President is required to furnish Congress information on the state of the Union. Jefferson was the first to send this information in a written message. The former practice having been for the executive to meet the two houses of Congress and address them, recommending such legislation as he deemed important. The precedent of Jefferson has been followed, and this

*The address of the Civil Service Commission is Washington, D. C. Application blanks for examination may be obtained from this commission as well as information concerning the Civil Service. See World Almanac, 1899.

communication is now known as the President's message.

It is the President's duty to see that the laws be faithfully executed. It is clear that the President's duty here extends not only to the enforcement of the acts of Congress, according to their express terms, but also extends to and covers the protection and enforcement of rights given by the Constitution and by treaties made with foreign countries. That he may be able to enforce the laws of the Union the President is made commander-in-chief of the army and navy, has the appointing authority for all branches of the Executive Civil Service, and the various executive departments are under his control and direction. He is not subject to the control of the legislative or judicial departments except by impeachment. Though the President cannot declare war he may and should meet with force a foreign invasion or a domestic rebellion without awaiting for Congress to act. It is for him to decide whether the facts justify the establishment of a blockade and the according of belligerent rights.—Prize Cases, 2 Black, 668. Congress having left it to him to call out the army when the exigency demands, or on the application of the States, he is the sole judge of the existence of facts warranting the employment of the militia.—*Luther v. Borden*, 7 How., 1.

Though Congress cannot confer upon the President any of its legislative powers, yet it may invest him with the general power to suspend the operation of a law upon certain contingencies.—*Field v. Clark*, 143 U. S., 649.

Section 4. Impeachment of the President.

The President, Vice President, and all civil officers of the United States shall be removed from office on impeachment for and conviction of treason, bribery, or other high crimes and misdemeanors.

Sec. 182. IMPEACHMENT.—The President, Vice President and all civil officers are subject to impeachment; this clause is held to include all civil officers commissioned by the President under Section 3, of this article, save those employed in the land and naval forces.

The crimes and offenses for which these officers may be impeached extend to any act of a character to render the accused unfit to hold office, or which the House considers deserving of punishment. The offenses are not necessarily punishable under the general laws, it is the misconduct in office, and abuse or betrayal of the trust reposed in the official, which most frequently deserves punishment in this way.—Pomeroy, Const. Law., Secs. 717-727; 1 Story, Const., Secs. 796-805; Foster, Com. on the Const., Ch. 13.

CHAPTER VII.

THE JUDICIAL DEPARTMENT.

Sec. 183. THE JUDICIARY AS A GOVERNMENT DEPARTMENT.—The position of the federal judiciary as one of the three co-ordinate branches of government, and the construction which has been put upon its power to ascertain and apply the law, makes it an important factor in a constitutional government. In England all laws stand upon the same basis, and the courts have no power to declare constitutional principles superior to acts of Parliament.—1 Bl. Com., 91. But in the United States the laws of Congress and of the States are subject to the scrutinizing gaze of the Supreme Court, which has power, as a branch of the government, to declare them void if they are contrary to the Constitution,—the paramount law of the land. This power of the court does not make it superior to Congress, as its power is limited to declaring what is the law as between the acts of Congress and the provisions of the Constitution. The authority of the court to declare the action of Congress void for being repugnant to the Constitution was clearly laid down in 1803 by Ch. J. Marshall in *Marbury v. Madison*, 1 Cranch., 137. The right was based upon the fact that if the action of the legislature could not be passed upon by the court, Congress would

be made supreme and the Constitution virtually annulled.

In the exercise of its final authority over laws the judiciary never interferes with political questions; and neither Congress nor the President are authorized to call upon the courts for advice in political matters, or to ascertain beforehand their opinion of contemplated action. Questions of war and peace, the recognition of governments, the jurisdiction of the United States over an island on the high seas, etc., are political questions, and are left to be determined by the other departments of government.—*United States v. Anderson*, 9 Wall., 56; *Gelston v. Hoyt*, 3 Wheat., 246. The courts only act upon constitutional questions when these come before them in the regular course of proceeding in suits between parties, and are necessary to a final decision of the cases. The courts in making decisions on constitutional questions have adopted the following general rules: 1. That such questions should be considered by the full bench, that is, with all the judges present. 2. A decision on the very point of constitutionality must be necessary to decide the case. 3. The rights of a party to the suit must be affected by the law which is being contested as unconstitutional, and no third person can raise such question. 4. The court will not declare a law unconstitutional on the ground of violating natural, political or social rights, unless such rights are protected in the Constitution. 5. By the weight of authority it is held that the court will not declare a law unconstitutional on principles not expressed in the Constitution.—*Illinois Cent. R.*

R. Co. v. Illinois, 146 U. S., 387; State v. Snow, 3 R. I., 64; Black, Const. Law, 57-68.

In the interpretation of the Constitution the courts observe the following rules: 1. The instrument is read in the sense of the terms that are used; its plain objects and aims are controlling. 2. The interpretation of the framers of the Constitution and the early courts are aids, but are not conclusive. 3. The practical administration of the departments of government is to be considered in determining their powers. 4. The Federal government is one of enumerated powers. 5. The powers positively limited are not to be enlarged under any theory of incidental powers. 6. Merely verbal criticism of the Constitution is to be avoided. 7. The Constitution of the United States is a whole, and is a charter for a national government. See Von Holst, Const. Law, 55.

ARTICLE III.

Section 1. The Federal Courts.

The judicial power of the United States shall be vested in one Supreme Court, and in such inferior courts as Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services a compensation, which shall not be diminished during their continuance in office.

Sec. 184. THE FEDERAL COURTS.—The Constitution declares that the judicial power shall be exercised by the Supreme Court and such inferior courts as Congress may establish. Thus it is left for Congress to determine of what the Supreme Court shall consist, and to establish the minor courts and apportion among

them the judicial power of the United States. By the Judiciary Act of Sept. 24th, 1789, the framework of the federal judicial system was established. A Supreme Court, three Circuit Courts, and thirteen District Courts were provided for. The Supreme Court as established consisted of one chief justice and five associate justices. The number of the associate justices have since increased to eight, so that the court now consists of nine judges, six of whom must be present to decide a case.—Von Holst, Const. Law, 99. The Circuit Courts have been increased to nine; each circuit embraces the territory of several States. At first the Judges of the Supreme Court went on the circuit and held court, but later it was found necessary to appoint Circuit Judges, and at present there are two or more Circuit Judges in each circuit. The Circuit Judges in each circuit sit with one of the Justices of the Supreme Court to make up a Circuit Court of Appeals. (26 Stat. at Large, 826.) The District Courts have each one judge, and have been increased in number until at present (1899) there are seventy-two District Courts. Each State or Territory has one or more District Courts.

In 1855, the Court of Claims was established to hear and determine claims against the government founded on any law of Congress, regulation of the executive department, or on contract with the government, and such claims as are referred to it by either house of Congress. From the Court of Claims appeals may be taken to the Supreme Court.

Congress also establishes courts for the Territories

and for the District of Columbia. But the judges of territorial courts are not protected from removal by the Constitutional provision asserting that federal judges shall hold during good behavior.—*Insurance Co. v. Canter*, 1 Pet., 546.

Section 2. Jurisdiction of Federal Courts.

Cl. 1. The judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States and treaties made, or which shall be made, under their authority; to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States; between a State and citizens of another State; between citizens of different States; between citizens of the same State claiming lands under grants of different States, and between a State, or the citizens thereof, and foreign states, citizens, or subjects.

Sec. 185. JURISDICTION OF THE FEDERAL COURTS.—The Constitution defines the general jurisdiction of the federal courts in nine different clauses, and it is this jurisdiction that Congress has by the Judiciary Act apportioned among the various federal courts. The powers of the courts are further confined to applying the law in cases which have been submitted by actual parties and in the form required by law. We shall consider the several cases to which the federal judicial power extends:

1. Where a federal question is involved, that is, one arising under the Constitution, laws, or treaties of the United States, it is evident that the federal judiciary should have jurisdiction to preserve uniformity in the decisions as well as to be independent in the construc-

tion and enforcement of its own laws. The Judiciary Acts, in giving effect to this provision, provide that where the constitutional right of any person has been effected by the final decision of the highest State court, and the decision has been adverse to the right, the case may be removed by a writ of error to the Supreme Court for examination and decision.—Rev. Stat. U. S., Sec. 709.

2. Ambassadors, Ministers and Consuls. These persons are the representatives accredited to our national government, and it alone should have power to determine cases affecting them.—*Davis v. Packard*, 7 Pet., 276.

3. All cases of Admiralty and Maritime Jurisdiction. These two words confer a wider jurisdiction than the word admiralty alone would have done. Admiralty jurisdiction extends to acts or injuries done upon the high seas, or within the ebb and flow of the tide; the word maritime extends the jurisdiction to all contracts, claims, services and matters purely maritime, and the jurisdiction under the one or the other is made to extend to the Great Lakes and to navigable rivers, though entirely within a State.—*Story*, Const., Sec. 1666; *The Genesee Chief*, 12 How., 443; *Jackson v. The Magnolia*, 20 How., 296. The admiralty jurisdiction of the United States within a State does not divest the State of its power over fisheries, or of its powers to punish crimes.—*United States v. Bevans*, 3 Wheat., 336; *Manchester v. Massachusetts*, 139 U. S., 240.

4. Controversies to which the United States Is a Party. The United States cannot be sued without its

consent. By the establishment of the Court of Claims it has given its consent to have certain cases against it determined. As plaintiff the government may sue in the federal courts the same as any other suitor.—*Ableman v. Booth*, 21 How., 506.

5. Controversies Between Two or More States. The suits in which States are parties are chiefly boundary disputes, and these are properly cognizable in the federal courts.—*Rhode Island v. Massachusetts*, 12 Pet., 657. By "States" is here meant States of the Union, and a suit could not be maintained by an Indian tribe against a State. *Cherokee Nation v. Georgia*, 5 Pet., 1. And in *Texas v. White*, 7 Wall., 700, it was held that a State in rebellion and not restored to peaceful relations was not a State within the meaning of this clause.

6. Suits Between a State and Citizens of Another State. When a State is obliged to sue to maintain its rights or protect its citizens, it is proper that the suit should be in the federal court if against the citizens of another State. But it would not be in accordance with the general supremacy of the States in all matters not delegated to the Union, to permit a State to be sued by citizens of another State. The original language of the Constitution was construed in *Chisholm v. Georgia*, 2 Dall., 419, to give an individual citizen of one State the right to sue another State. This decision gave rise to the 11th Amendment, which declares that "The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States

by citizens of another State, or by citizens or subjects of any foreign State."

7. Between Citizens of Different States. This class of cases constitutes a large part of those adjudicated in the federal courts. The fact of diverse citizenship must appear on inspection of the record of the case, and a resident of one of the Territories or of the District of Columbia cannot sue or be sued as a citizen of a State.—Cooley, Principles, 136-7.

8. Citizens of the Same State Claiming Lands Under Grants of Different States. The dispute here is really between the States.

9. Suits Between a State or Its Citizens and Foreign States, Citizens or Subjects. Under this clause it is held that our courts are not open to aliens when their country is at war with our own. There is nothing to compel a foreign state to come into our courts to sue or defend, but it may do so.

Sec. 186. WHAT LAW GOVERNS THE FEDERAL COURTS.—The distinction between the common law and equity is observed by the federal courts. There is no common law of the United States, and it is the common law and usages of the several States which govern the decisions of the courts. When the matter is of local importance to the State the decisions of the State courts will be followed, but if of a general nature, as mercantile and commercial law, it is the general principles of the law which govern. In equity the court has established rules in which it is provided that cases not within the rules will be governed according to the ancient practice in England. In punishing

crimes the federal courts are limited to the offenses specified in the federal laws, treaties, or Constitution.—United States v. Hudson, 7 Cranch, 32; *Pana v. Bowler*, 107 U. S., 529.

Cl. 2. In all cases affecting ambassadors, other public ministers and consuls, and those in which a State shall be a party, the Supreme Court shall have original jurisdiction. In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make.

Sec. 187. ORIGINAL AND APPELLATE JURISDICTION.—Original jurisdiction is the power to entertain an action from its commencement; while appellate jurisdiction extends to review cases arising under the jurisdiction of inferior tribunals. In the above clause the Supreme Court is given original jurisdiction in certain cases, and the courts have construed the provision to deny the Supreme Court original jurisdiction in all other cases.—*Marbury v. Madison*, 1 Cranch, 137. In which case the authority of the Supreme Court to issue a mandamus to one of the heads of the executive department was denied, though authorized by the Judiciary Act. It was long contended that Congress could not confer upon the inferior federal courts jurisdiction of the matters over which the Supreme Court had been given original jurisdiction. In *Bors v. Preston*, 111 U. S., 252, it is held that original jurisdiction does not exclude the jurisdiction of other courts.

The appellate jurisdiction not being defined by the Constitution must be regulated by the action of Con-

gress. Appeals are provided for in the judiciary act; many cases are allowed to be finally decided in the lower federal courts. In some cases appeals may be had without reference to the amount in dispute, but as a rule there can be no appeal from the Circuit Court unless \$5,000 is involved in the judgment. Questions of jurisdiction, cases under the revenue laws, etc., are appealable without reference to the amount in controversy.—*Handley v. Stutz*, 137 U. S., 366; 25 Stat. at Large, 693.

On a writ of error only questions of law are reviewed, but in equity cases the whole proceedings of the lower courts are taken up. In all cases of appeal the decision of the lower court must have been final, and the general test of this is whether anything further remains to be done to close up the suit other than a mere computation. Appeals must be taken within two years, and any party to the record has the right to appeal. Cases may be sent to the Supreme Court by the judges of the lower courts where they are unable to agree, or consider the question of such importance as to demand an opinion of the higher court, irrespective of the amount in controversy.

Sec. 188. EXCLUSIVE AND CONCURRENT JURISDICTION.—We have already seen in another connection, that the grant of certain powers to the federal government does not necessarily exclude the authority of the States over the same matters. The Constitution does not provide that the judicial power of the United States shall be exclusive of the States, and unless Congress, in providing for the exercise of the

powers, makes the jurisdiction of the federal courts exclusive, suits may be instituted in the State courts, though within the grant of power to the federal courts. Congress has made the jurisdiction of the federal courts absolutely exclusive in the following class of cases: 1. Crimes and offenses against the United States. 2. Penalties and forfeitures under the laws of the United States. 3. All civil cases under the admiralty and maritime jurisdiction. 4. All seizures under the laws of the United States. 5. Cases arising under the patent and copyright laws. 6. All proceedings in bankruptcy. 7. All controversies of a civil nature where a State is a party, except between a State and its citizens, and between a State and citizens of other States or aliens.—Rev. Stat. U. S., Sec. 711; Cooley, Principles, 138.

The federal courts have concurrent jurisdiction with the State courts in all suits of a civil nature, in law or equity, where the matter in dispute exceeds, exclusive of interests and costs, the value of \$2,000, and arising under the class of cases over which the federal courts are given jurisdiction.

Provision is made for the removal of cases commenced in the State courts to the federal courts where such cases are properly cognizable in the federal courts.—Cooley, Principles, 141-2; Mitchell v. Smale, 140 U. S., 406; 25 Stat. at Large, 434.

Sec. 189. HABEAS CORPUS.—The writ of habeas corpus may be issued by the Supreme, Circuit and District Courts, or by the various judges of these courts, but the use of the writ by the federal courts is a

limited one, and the general authority to inquire into restraints upon personal liberty is reserved to the State courts. The Supreme Court, except in cases affecting ambassadors, ministers and consuls, or where a State is a party, can only issue the writ in aid of its appellate jurisdiction.—*Ex parte Watkins*, 7 Pet., 568; *Ex parte Dorr*, 3 How., 103; *Baker v. Grice*, 169 U. S., 284.

Cl. 3. The trial of all crimes, except in cases of impeachment, shall be by jury, and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

Sec. 190. JURY TRIAL.—This clause was to make the federal courts amenable to the general principles of civil liberty in regard to jury trials held in the vicinity where the crime was committed. The jury meant is the common law jury of twelve men.—*Thompson v. Utah*, 170 U. S., 343.

Section 3. Treason.

Cl. 1. Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court.

Cl. 2. The Congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attained.

Sec. 191. TREASON.—The Constitutional definition of treason is that of the Statute of Treasons, 25 Edw., III. (1352.) It excludes constructive treason by declaring that the intent must be evidenced by an overt

act, specifically named. A mere conspiracy to subvert the government is not treason, unless there is an actual levying of war.—*Ex parte Bollman*, 4 Cranch, 75. See Cooley, Principles, 314-315. The giving of information, provisions, alms, etc., to the enemies of the United States would be treason. It is not treason to kill the President.

The limitation in the Constitution on the power of Congress to punish treason was to prevent the misuse of the power as had been done in the past. At common law conviction of treason worked a corruption of blood and forfeiture of the estate of the person attainted. The punishment fixed for treason is hanging.

CHAPTER VIII.

STATE RECORDS, PRIVILEGES OF CITIZENS, ETC.

Sec. 192. NATIONALIZING PROVISIONS.—In the establishment of a Federal government with a number of individual States, the framers of the Constitution recognized the importance of providing certain unifying provisions that the citizens of distinct States might not, as a result of hostile legislation between the States, come to regard themselves as aliens and foreigners when beyond the limits of their own State and yet within the limits of the United States. By the provisions of Art IV., what might otherwise have to depend upon rules of comity between the States is made a Constitutional obligation between the constituent parts of the Federal Union, and the rights and privileges of citizens of the several States are protected by uniform provisions, though the local independence of the States is not molested.

ARTICLE IV.

Section 1. State Acts and Records.

Full faith and credit shall be given in each State to the public acts, records and judicial proceedings of every other State. And the Congress may, by general laws, prescribe the manner in which such acts, records and proceedings shall be proved and the effect thereof.

Sec. 193. "FULL FAITH AND CREDIT."—By full faith and credit is meant that each State must rec-

ognize fully the action of other States in the exercise of their lawful jurisdiction. It does not extend the jurisdiction of one State into the territory of another. The process from the courts of one State cannot run into another State, but constructive service by publication is sufficient when property is within the jurisdiction of the court.—*Pennoyer v. Neff*, 95 U. S., 714. The valid proceedings in the courts of one State must be given the same validity in other States as they would have in the State in which rendered. But it is always competent to show that the proceedings were not valid, as that the court did not have jurisdiction of the subject matter, or the parties to the suit. So anything that goes to the release or discharge of the judgment may be shown, as the statute of limitations.

Congress has provided by law that the public acts of States or Territories shall be authenticated by affixing to them the seal of such State or Territory, and the judicial proceedings of the various courts are authenticated by the seal of the court with the attestation of the clerk, and a certificate from the judge or magistrate that the attestation is in due form.—Rev. Stat. U. S., Sec. 905.

Section 2. Privileges of Citizens, etc.

Cl. 1. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

Cl. 2. A person charged in any State with treason, felony, or other crime, who shall flee from justice and be found in another State, shall, on demand of the executive authority of the State from which he fled, be delivered up, to be removed to the State having jurisdiction of the crime.

Cl. 3. No person held to service or labor in one State, under the laws thereof, escaping into another, shall, in conse-

quence of any law or regulation therein, be discharged from such service or labor, but shall be delivered up on claim of the party to whom such service or labor may be due.*

Sec. 194. PRIVILEGES AND IMMUNITIES OF CITIZENS.—The privileges secured to citizens by this clause have never been fully enumerated by the courts. They do not extend to political privileges as the franchise and the holding of office; these are conferred by the State upon its permanent citizens. They do extend to the protection of life, liberty and property; to enable a citizen to pass through or reside in any other State, to bring suits in the courts of such State, to take, hold and dispose of property, etc.—*Corfield v. Coryell*, 4 Wash. C. C., 371. The citizens intended are citizens of the United States, and the provision has no application to non-naturalized persons, or, previous to the Fourteenth Amendment, to free colored people.—*Scott v. Sanford*, 14 How., 393. Neither does the clause apply to corporations, as only natural citizens are intended.—*Paul v. Virginia*, 8 Wall., 168; *Cooley*, Principles, 207.

Sec. 195. EXTRADITION OF CRIMINALS.—The offenses for which a person may be extradited include statutory crimes of recent creation as well as those existing at the adoption of the Constitution. But just where the line is drawn between crimes and misdemeanors of slight importance is uncertain.—*Kentucky v. Dennison*, 24 How., 66; *Taylor v. Taintor*, 16 Wall., 366. The Constitution intends the duty of ex-

*This clause referred to fugitive slaves, and is now abrogated.

tradition to be absolute, providing, first, that the demand is in the required form; second, the charge has been made in legal form before a court of competent jurisdiction; and, third, the defendant has actually fled from the State demanding his extradition.—Von Holst, *Const. Law*, 245. But should the executive of the State refuse to give up a person so demanded the Supreme Court has held that it cannot compel the performance of the duty.—*Kentucky v. Dennison*, *supra*.

Section 3. New States and Territories.

Cl. 1. New States may be admitted by the Congress into this Union; but no new State shall be formed or erected within the jurisdiction of any other State; nor any State be formed by the junction of two or more States, or parts of States, without the consent of the legislatures or the States concerned, as well as of the Congress.

Cl. 2. The Congress shall have power to dispose of, and make all needful rules and regulations respecting the territory or other property belonging to the United States; and nothing in this Constitution shall be so construed as to prejudice any claims of the United States or of any particular State.

Sec. 196. NEW STATES.—Congress may admit new States, but is not compelled to admit them. Von Holst asserts that the evident intention of the authors of the Constitution in this clause was to provide for the States which were to develop from the territorial domain of the Union, and that in organizing Territories Congress "has always aimed, not to act from the standpoint of colonial administration, but, on the contrary, to ascertain the life forms adapted to an embryonic State."—*Const. Law*, 185-6. But States have been admitted into the Union which were not part of the

territorial domain, as in the case of Texas, which was an independent State. Congress may also impose restrictions upon States seeking admission to the Union.—Cooley, Principles, 192-3. The Hawaiian Islands were annexed in the same maner as Texas, namely, by a resolution passed by Congress, but in the case of the Islands there was no intention of making them a State in the Union.

Clause two of this section gives the Congress power to make needful rules and regulations for the territory belonging to the United States. There was much dispute in regard to this power in the days of slavery.—Von Holst, Const. Law, 176-9.

Section 4. Guarantee to the States.

The United States shall guarantee to every State in this Union a republican form of government, and shall protect each of them against invasion; and, on the application of the Legislature, or of the executive (when the Legislature cannot be convened), against domestic violence.

Sec. 197. REPUBLICAN GOVERNMENT.—The United States are obligated to the States as respects securing and maintaining republican governments in the States. It is construed to be the power of Congress to determine finally in regard to when this guarantee is fulfilled, and the other departments must acquiesce in its decision.—Luther v. Borden, 7 How., 1, 42. The republican government of the States may be threatened by conquest from without; by revolution of the people against the constituted government, or by adopting some other form of government under the power of revising their constitution, which would not

be republican in form. In these cases, Judge Cooley says, it would be the duty of the federal government to protect the existing government by the employment of the military force.—Principles, 215; *Texas v. White*, 7 Wall., 700. A republican government as intended by this clause cannot be definitely defined; it differs from a monarchy, and from an aristocracy, but not necessarily from a democracy, as, in its shortest description, it was to approach a government of, for, and by the people.

Sec. 198. PROTECTION AGAINST DOMESTIC VIOLENCE.—Upon demand of the legislature or of the executive of the State the federal government is bound to protect the States against domestic violence. The provision as to a demand on the part of the State is to exclude the federal authorities from State matters unless there is urgent need. But the federal property and interests within a State may be protected without demand from the States. Whether there exists domestic violence warranting the use of troops is a question of fact for the President to decide, and there is no appeal from his decision.—*Martin v. Mott*, 12 Wheat., 29.

ARTICLE V.

Power of Amendment.

The Congress, whenever two-thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two-thirds of the several States, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three-fourths of the several States, or by

conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by Congress; provided, that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no State, without its consent, shall be deprived of its equal suffrage in the Senate.

Sec. 199. MODE OF AMENDING THE CONSTITUTION.—The above article is self-explanatory. The amendments adopted so far have been proposed by Congress. All amendments must be ratified by three-fourths of the States, and in case an amendment should seek to change the equal suffrage in the Senate, all the States should ratify it. For tacit amendment, and additions to the Constitution by construction, see Cooley, *Principles*, 3d ed., 39-40; Bryce, *Am. Commonwealth*, Vol. I., Ch. 31.

ARTICLE VI.

Public Debts, etc.

Cl. 1. All debts contracted and engagements entered into before the adoption of this Constitution shall be as valid against the United States under this Constitution as under the Confederation.

Cl. 2. This Constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

Cl. 3. The Senators and Representatives before mentioned, and the members of the several State legislatures, and all executive and judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

Sec. 200. PUBLIC DEBT, SUPREMACY OF THE CONSTITUTION, ETC.—By clause 1 of this Article the debts of the Confederation which was replaced by the Union are recognized as binding. Clause 2 declares the federal Constitution and laws and treaties made thereunder the supreme law of the land. This provision it is that establishes the federal government as a workable system. It is binding on the States as well as on individuals.—*Dodge v. Woolsey*, 18 How., 331.

State and federal officers are required to take an oath or affirmation to support the Constitution; this is proper, as it is the supreme law of the land. But no religious test shall ever be required as a qualification to office under the United States. Von Holst well observes: "The United States are not legally a Christian state; they are not even a theistic state; but just as little are they a pagan state. They are simply a state. The religious convictions of the people and the churches as communities of believers do not exist, so far as the United States are concerned, i. e., all these things lie without their sphere of action."—*Const. Law*, 226.

ARTICLE VII.

Ratification of the Constitution.

The ratification of the conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same.*

*This clause is followed by the signatures of the members of the Convention by States. Among these men were Washington, Franklin, Hamilton, James Wilson, James Madison, etc., the most able and experienced statesmen of the time.

CHAPTER IX.

AMENDMENTS TO THE CONSTITUTION.

Sec. 201. THE AMENDMENTS.—The fifteen Amendments so far adopted were proposed by Congress, and ratified by the legislatures of the several States in pursuance of the fifth Article of the Constitution. Being later in time they supersede and alter the original Constitution in all respects where inconsistent with it. The first ten Amendments were proposed and adopted soon after the Constitution, and specifically limit the Congress of the United States and guarantee the fundamental rights of the people; these are known as the American Bill of Rights. The last three impose restrictions on the States in dealing with the negroes.*

ARTICLE I.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof, or abridg-

* "The first ten amendments and the last three naturally arrange themselves in two classes, each of which, by its subject-matter and purpose, is distinctively referable to a particular period in the constitutional history of the country. One class consists of those which impose limitations on the power of the several departments of the federal government, with a view more completely to protect the liberties of the people and the reserved rights of the States; and the other is confined in the main to taking from the States the power to oppress particular classes of the people, to discriminate unjustly between classes, and to take away such rights as are fundamental. The first ten belong to one class and the last three to the other." Cooley, Principles, Ch. XII.

ing the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Sec. 202. FREEDOM OF RELIGION, OF SPEECH, AND OF THE PRESS.—The religious liberty as guaranteed by the Constitution does not extend to forbid the punishment of crimes because their commission may be believed to be a religious duty. So where the statutes forbid bigamy, and the defendant admits a second marriage and attempts to justify on the ground of religious belief, the court has held that polygamy being a crime no religious belief can be an excuse for it, as otherwise the religion would become the supreme law of the land.—*Reynolds v. United States*, 98 U. S., 145. And where a State statute forbade the members of an organization which practiced polygamy the franchise, the court upheld the statute on the ground that the protection of religious belief does not extend to permit crime under the guise of religion to subvert the good order and general peace of society.—*Davis v. Beason*, 133 U. S., 333.

Freedom of speech and of the press mean the same thing as respects the extent of the privilege guaranteed. "It is plain that the language of this amendment imports no more than that every man shall have a right to speak, write, and print his opinions upon any subject whatever, without any prior restraint, so always that he does not injure any person in his rights, person, property, or reputation, and so always that he does not thereby disturb the public peace, or attempt to subvert the government."—2 Story Const., **Sec.**

1880. In *Cincinnati Gazette Co. v. Timberlake*, 10 Ohio St., 548, it is stated "that the liberty of the press, properly understood, is not inconsistent with the protection due to private character. It has been well defined as the right to publish, with impunity, the truth, with good motives and for justifiable ends, whether it respects government, magistracy, or individuals." There can be no censorship of articles previous to publication. See 4 Bl. Com., 151; Cooley, *Principles*, Ch. 14; Const. Lim., 6th ed., 518.

ARTICLE II.

A well-regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed.

ARTICLE III.

No soldier shall, in time of peace, be quartered in any house without the consent of the owner; nor in time of war, but in a manner to be prescribed by law.

Sec. 203. **THE RIGHT TO KEEP AND BEAR ARMS.**—The provisions of Articles 2 and 3 were intended to protect the people from arbitrary action on the part of government similar to that of the English government in the past. The right of the people to bear arms was a practical recognition of their right to demand with force that the government as constituted observe Constitutional restraints. The right is general and extends to all citizens, whether enrolled in the militia or not. But it is held that it does not authorize the carrying of weapons that are concealed, and which are chiefly useful in individual encounters.—Cooley, *Principles*, 3d ed., 299.

ARTICLE IV.

The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated; and no warrants shall issue but upon probable cause, supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized.

Sec. 204. SEARCH WARRANTS.—The above clause restricts the use of search warrants to a reasonable compass; the officer must be kept within the terms of the writ, and goods seized must be taken before the court. The search warrant cannot be used to secure evidence of intended crime, and not generally to secure evidence against a person accused of crime.—*United States v. Boyd*, 116 U. S., 616. And a compulsory production of papers for the purpose of establishing a criminal charge, or the forfeiture of property, violates both the fourth and fifth amendments.—*United States v. Boyd*, *supra*.

ARTICLE V.

No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia when in active service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled, in any criminal case, to be a witness against himself; nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Sec. 205. TRIAL FOR CRIME, ETC.—Infamous offenses include all such as are punished by imprisonment in the penitentiary, whether the sentence in-

cludes hard labor or not. They involve moral turpitude in the offender, or infamy in the punishment, or both.—United States v. De Walt, 128 U. S., 393; *Ex parte Wilson*, 114 U. S., 417. The possibility of being subjected to such a sentence is the test and not the sentence. The same offense means the same criminal act. A man is in jeopardy when put on trial, upon a good indictment and before a competent court when the jury is impanelled and sworn. But the jeopardy fails if the jury disagree, or if the case is stopped by the sickness or death of the judge or a jurymen.—United States v. Boyd, *supra*; *Boswell v. State*, 111 Ind., 47; *Cooley*, Const. Lim., 6th ed., 399.

The accused may be a witness in his own behalf if he wishes. By due process of law is meant the various securities which the Constitution and the common law guarantee to the accused.

ARTICLE VI.

In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Sec. 206. RIGHTS OF ACCUSED PERSONS.—The right to a speedy trial means that the trial shall not be delayed longer than is reasonably necessary for the prosecution to prepare for trial. The general public or the friends of the accused are to be admitted to the trial to insure fairness and impartiality. The indict-

ment must set forth with reasonable particularity all the essentials of the offense. The right to be confronted with witnesses does not exclude the admission of documentary evidence to establish collateral facts.

ARTICLE VII.

In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise re-examined in any court of the United States than according to the rules of the common law.

Sec. 207. JURY TRIAL IN CIVIL SUITS.—In suits at common law, that is, as distinguished from suits in equity, a jury trial is preserved. The jury meant is the common law jury of twelve men.—*Thompson v. Utah*, 170 U. S., 343; *Cooley, Principles*, 3d ed., 321.

ARTICLE VIII.

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted.

Sec. 208. BAIL AND PUNISHMENT.—The amount of bail required in the different cases is usually within the discretion of the court. In capital offenses the accused is not generally admitted to bail. What punishments are unusual and cruel cannot be definitely stated. Electrocution has been decided not to be cruel or unusual within this prohibition.—*People v. Durston*, 119 N. Y., 569.

Sec. 209. FEDERAL LIMITATIONS.—The first eight amendments are limitations on the departments of the federal government and not on the States. Under the rule previously mentioned, that the provisions of

the Constitution only refer to the States where they are expressly mentioned, these amendments are held to give the individual no similar immunities or guaranties from the action of the States.—In *re Kemmler*, 136 U. S., 436; Von Holst, Const. Law, 50 n.

ARTICLE IX.

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

ARTICLE X.

The powers not granted to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively or to the people.

Sec. 210. RESERVED POWER.—By Articles 9 and 10 the sovereign people assert their reserve power in all matters not granted to the federal government or to the States. Whether the people of the United States or the people of the States is meant, is in dispute. We think that the wording would include both the people of the States and the people of the United States, as the powers retained are respectively State or National. See Von Holst, Const. Law, 51 n.

ARTICLE XI.

The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign State.*

ARTICLE XII.

Cl. 1. The electors shall meet in their respective States, and vote by ballot for President and Vice President, one of

*See ante, Section 185.

whom, at least, shall not be an inhabitant of the same State with themselves; they shall name in their ballots the person voted for as President, and in distinct ballots the person voted for as Vice President; and they shall make distinct lists of all persons voted for as President, and of all persons voted for as Vice President, and of the number of votes for each, which list they shall sign and certify, and transmit, sealed, to the seat of government of the United States, directed to the President of the Senate. The President of the Senate shall, in the presence of the Senate and House of Representatives, open all the certificates, and the votes shall then be counted; the person having the greatest number of votes for President shall be the President, if such number be a majority of the whole number of electors appointed; and if no person have such majority, then from the persons having the highest numbers, not exceeding three, on the list of those voted for as President, the House of Representatives shall choose immediately by ballot the President. But in choosing the President, the votes shall be taken by States, the representation from each State having one vote. A quorum for this purpose shall consist of a member or members from two-thirds of the States, and a majority of all the States shall be necessary to a choice. And if the House of Representatives shall not choose a President, whenever the right of choice shall devolve upon them, before the fourth day of March next following, then the Vice President shall act as President, as in the case of the death or other constitutional disability of the President.

Cl. 2. The person having the greatest number of votes as Vice President shall be the Vice President, if such number be a majority of the whole number of electors appointed, and if no person have a majority, then from the two highest numbers on the list the Senate shall choose the Vice President. A quorum for the purpose shall consist of two-thirds of the whole number of Senators, and a majority of the whole number shall be necessary to a choice.

Cl. 3. But no person constitutionally ineligible to the office of President shall be eligible to that of Vice President of the United States.**

**The amended method of electing President and Vice President was considered in Chapter VI., Section 177.

ARTICLE XIII.

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Sec. 2. Congress shall have power to enforce this article by appropriate legislation.

Sec. 211. SLAVERY ABOLISHED.—The above article abolishing slavery was proclaimed a part of the Constitution December 18, 1865. The former slave States were compelled to ratify this amendment as a condition precedent to their re-admission to Statehood. It puts an end forever to the vexed question of human slavery, which had been a blot on the national escutcheon for many years.

ARTICLE XIV.

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Sec. 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, representatives in Congress, the executive and judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male members of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number

of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

Sec. 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State Legislature, or as an executive or judicial officers of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each house, remove such disability.

Sec. 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Sec. 5. The Congress shall have power to enforce by appropriate legislation the provisions of this article.

Sec. 212. UNITED STATES CITIZENSHIP.—Previous to the adoption of the fourteenth amendment the Constitutional provision in regard to citizenship was embraced in Article IV., Section 2, of the Constitution, and under it Calhoun and his school claimed that there was no national citizenship, as the clause referred exclusively to State citizenship. The fourteenth amendment, seeking to protect emancipated negroes from hostile State legislation, defines and specifies what shall constitute national citizenship. All persons born or naturalized “in” the United States are possessed of a dual citizenship,—State and National. The

States are forbidden to make any law which shall abridge the privileges or immunities of citizens of the United States. This limitation put upon the States is construed to extend to only those fundamental rights which Justice Washington had enumerated as protected by Article IV., Section 2, of the Constitution.—*Corfield v. Coryell*, 4 Wash. C. C., 371; ante., Sec. 194. And this amendment does not change the nature of the relation between the States and the United States. It is the privileges and immunities of United States citizenship that are protected, and these are not as broad as the privileges of State citizenship. By construction the fourteenth amendment makes the negro a citizen of the United States, and of the State where he resides, but it does not subject the whole domain of civil rights to the controlling power of Congress, and does not change the federal character of the Union.—*Slaughter House Cases*, 16 Wall., 36; *Strader v. W. Va.*, 100 U. S., 303; *Williams v. Mississippi* 170 U. S., 213; *U. S. v. Reese*, 92 U. S., 214.

Colored men as well as other classes of citizens are protected from discrimination or arbitrary interference with their fundamental rights on the part of a State, but this amendment does not require that every person in the land be extended the same rights and privileges as every other person.—*Barber v. Connolly*, 113 U. S., 27; *New York v. Squire*, 145 U. S., 175. See *Cooley*, Principles, Ch. 13.

Section 2 of this amendment was directed mainly against the former slave States, to compel them by a threatened reduction of representation to grant the

suffrage to negroes. The provision has never been enforced. Mississippi, in 1890, adopted a Constitution in which an educational qualification is established for voters, shutting out a large number of illiterate blacks. South Carolina and Louisiana have similar qualifications. These qualifications will doubtless be upheld.—*Williams v. Mississippi*, 170 U. S., 213.

ARTICLE XV.

Section 1. The right of the citizens of the United States to vote shall not be denied or abridged by the United States or any State on account of race, color or previous condition of servitude.

Sec. 2. The Congress shall have power to enforce by appropriate legislation the provisions of this article.

Sec. 213. SUFFRAGE.—It is popularly believed that the thirteenth amendment freed the negroes, the fourteenth made them citizens and the fifteenth gave them the right to vote. The last part of this statement is incorrect. The fifteenth amendment gives no one the right to vote, it merely makes it impossible to withhold the franchise from a citizen on account of his race, color, or previous condition of servitude. On any other ground the suffrage may be withheld from white or black citizens as the political policy of the State or nation may determine. Women are not permitted to vote, and by an educational qualification the various States may restrict and limit to a considerable extent the persons who may vote and yet the provisions of this amendment would not be violated.—*Gougar v. Timberlake*, 37 N. E. Rep., 644; *Von Holst*, Const. Law, 75.

It is best, we think, that the amendments which were adopted in haste, and reluctantly accepted by a portion of the Union, should have been construed as they have been,—mildly. Four judges of the nine who decided the Slaughter House Cases favored construing the amendments as making a change in the fundamental nature of the Union, making it in fact a centralized State. A wiser opinion prevailed, and though for a time the illiterate element of our population may be discriminated against in the matter of voting, this will be remedied by the spread of education. For the few instances where there has been this tendency to limit the franchise we may note a dozen instances where States are ready to extend to their citizens the initiative and referendum—the right to make or unmake laws by popular vote. It is fitting that we conclude this summary of our Constitution with an allusion to the ever-growing respect for popular government.

CHAPTER X.

STATE CONSTITUTIONS AND GOVERNMENT.

Sec. 214. THE STATES.—As a result of the Revolution thirteen States or Colonies secured their independence and later established the federal government which we have been considering. But from the first the people of these States have retained and perfected their political organization within the State for the control of all matters not delegated to the government of the Union. While the struggle for independence was going forward all of the original States save Rhode Island and Connecticut drew up written Constitutions, establishing the frame work of republican government. From the territory belonging to these States and ceded by them to the Union, and from other territory purchased or secured by treaty, additional States have been formed and admitted, until at present there are forty-five States in the Union. The government in each of the States is based upon a written Constitution, which is the fundamental law of the State. These Constitutions have been adopted by the people of the States after being formulated in conventions chosen for the purpose. In each of the States as well as in the Federal Union, the people are recognized as the possessors of all sovereignty, and all authoritative acts within a State must be in accordance with their expressed will.*

* "All men are, by nature, free and independent, and have

Sec. 215. MAKEUP OF THE CONSTITUTIONS.—The State Constitutions usually consist of a bill of rights, the frame of government or distribution of political power, and a schedule providing for the necessary steps in changing from the old to the new government. The schedule being of temporary importance is not found in all Constitutions.*

The bill of rights usually contains those fundamental rights which we have described as being gleaned from the English charters, and which are found in the federal Constitution. They aim to protect the citizen in his life, liberty and property against arbitrary government, secure him a speedy and impartial jury trial, etc. The enumeration of certain rights of the citizen which are to be protected does not deny that the citizen has other fundamental rights not enumerated.—Von Holst, *Const. Law*, 267.

The State Constitutions establish republican governments and in them the separation of the three de-

certain inalienable rights, among which are those of enjoying and defending life and liberty, acquiring, possessing, and protecting property, and seeking and obtaining happiness and safety.

"All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform or abolish the same whenever they may deem it necessary; and no special privileges or immunities shall ever be granted, that may not be altered, revoked, or repealed by the general assembly." *Ohio Const.* (1851), Art. I., Secs. 1 and 2, Bill of Rights.

*Two additional parts of State Constitutions are sometimes given, as (a) description of the State's boundaries, (b) miscellaneous provisions concerning which the people have expressed their will. Bryce, *Am. Com.*, Vol. I., p. 437, *Am. ed.*

partments, executive, legislative and judicial, is as complete as in the federal government. The Constitutions also specify who shall exercise the right of suffrage, and recognize the existence of local self-government.

Sec. 216. THE LEGISLATURES.—In all of the States the bicameral legislative system prevails, that is, the legislature is composed of two houses. The more numerous branch is called the assembly or house of representatives, and the other branch is called the senate. The two houses together form the "general assembly," or State legislature. Both branches of the legislature are elected directly by the people, the State being apportioned by law into districts according to population, the senatorial districts being larger than the districts in which representatives are elected.*

State senators are usually elected for a term twice that of representatives. The rule is four and two years, but in some of the States the term is two and one respectively. In most States the senators are classified so that all do not go out of office at the same time. In some of the States the legislature meets annually, in others only biennially. The legislature may also be called in extra session. The members of the legislature are paid a salary, either per diem, or an annual

*Minority Representation. In Illinois, by the Constitution of 1870, it is provided that the representatives shall be elected in the senatorial districts, each district being entitled to three representatives. It is further provided that each voter may, instead of voting for three representatives, cast his three votes for a single candidate. By this means a minority party may secure representation in the legislature.

salary. The sentiment is growing that biennial sessions are sufficient for all the necessary ends of government, and that annual sessions simply result in littering the statute books with laws in the interests of certain enterprises or monopolies whose exploitation with legislative sanction is destructive of the true ends of popular government. See Von Holst, *Const. Law*, 270-1.

Sec. 217. **LEGISLATIVE POWERS.**—In treating the powers of Congress we saw that the federal Constitution was a grant of power to the departments as well as the authority which distributed the powers granted between the departments of government. Congress, we learned, had only the powers granted to it or necessarily implied to make those granted effective. The State legislatures are not so limited, and the State Constitutions, instead of granting, simply apportion the powers reserved in the States, so that the legislature possesses all power not granted to the federal government, or specifically denied by the State Constitution, or impliedly denied by the nature of our institutions and government.—Cooley, *Principles*, 3d ed., 386; *Const. Lim.*, 6th ed., 106-7.

The legislative authority in the States is more minutely regulated in its exercise than that of Congress. In a number of Constitutions it is provided that no bill or law shall contain more than one subject, which shall be clearly expressed in its title. The provision for oral reading of bills on three separate days is found in most of the Constitutions, and in several it is provided that a majority of all the members elected is necessary to

the passage of a bill. Various expedients, as roll call and viva voce voting, are resorted to in a number of the States to fix the responsibility of individual members to their constituents. The judicial power of the legislature is limited in a number of the States, and they are forbidden to grant divorces. Most of the Constitutions of recent date recognize the temptation which the people's delegates are subjected to from individuals and corporations seeking to get special privileges from the law-makers, and provide that the granting of corporate franchises shall be by general laws.* And the power to pledge the credit of the State or use its funds for the benefit of private corporations is generally denied or carefully limited. All of these regulations result from the growing distrust of legislative bodies, who justly merit this distrust and seemingly seize every opportunity to demonstrate to their constituents the need of further restrictions and checks upon their power.**

* "The general assembly shall pass no special act conferring corporate powers.

"Corporations may be formed under general laws; but all such laws may, from time to time, be altered or repealed." Ohio Const., Art. XIII., Secs. 1 and 2.

**Some unthinking individuals point to the dishonesty of legislative bodies, as they are constituted at present, as evidence of the inherent weakness of popular government, and the inability of the people to rule themselves. A moment's reflection will show the foolishness of such an assumption. When a State comprising five or six millions of people is ruled by a body of several hundred corporation attorneys, plus a few brewery agents and municipal parasites, and is consequently misgoverned, it is not popular government that is at fault. Such a system is not popular government. Legislative

Sec. 218. LIMITATION OF THE STATE'S ACTIVITY.—In nearly all of the States at present there is a tendency to limit the sphere of governmental activity to those things which are necessary to make, administer and execute the laws, and to avoid alike internal improvements and the operation and control of public utilities as the railroads, canals, bridges, telephones, telegraphs, etc. The apprehension of evil from two sources has been the cause of this shirking of evident duty on the part of the States, which guarantee their citizens the right to life, liberty, and happiness, and take no adequate measures to protect citizens in any of these inalienable rights. A fear that unscrupulous individuals would fill their pockets from the public revenues if these industrial enterprises were included in the sphere of government, and that the government becoming more powerful would grow arbitrary and tyrannical as the governments of the past, has been responsible for the limitation of governmental functions in America. We must admit that these apprehensions are not unfounded, unless at the same time that the sphere of government is enlarged, new checks for keeping it within the control of the majority are devised. But these checks are being devised from time to time, and the only escape from such corporate mo-

corruption simply proves that plutocracy has prostituted the system which an ever trustful people believed would suffice to secure equal and just laws. It is now necessary by the further expedients of the Initiative and Referendum to bring the salutary influence of the rank and file of the citizens to counteract and nullify the corruptive and destructive tendencies of the plutocratic trusts and monopolies.

nopoly of wealth and industry as will deprive the great majority of the people of all semblance of liberty and happiness is for the State to widen its sphere of action, and control, if not operate, all the agencies in which the general public are interested, and the occupations which may control the common necessities of life. We believe the sentiment of the people is changing on this subject, and as soon as the proper safeguards are established for keeping the government in the hands of the people the sphere of governmental activity will be enlarged as the present condition of affairs seems to demand.

Sec. 219. THE STATE EXECUTIVE DEPARTMENT.—The function of the executive department in the States, as well as in the federal government, is to take care that the laws are faithfully executed. The chief executive officer is styled the governor. The qualifications for this office vary slightly in the different States, but are chiefly to the three points, citizenship, age, and residence in the State. The governor is elected by the voters of the State; the term of office varies in the several States, ranging from one to four years. In a few States the governor is not eligible to immediate re-election. In most States a lieutenant governor is elected at the same time and for the same term as the governor; he is presiding officer over the Senate, but without a vote, and succeeds the governor in case of a vacancy in that office.

Sec. 220. POWERS AND DUTIES OF THE GOVERNOR.—The function of the governor corre-

spond to that of the President; he represents the State in its relation to other States, enforces the laws, is commander-in-chief of the militia of the State, and may call it out to enforce the laws or put down an insurrection. He is aided and advised by the other executive officers of the State. It is his duty to inform the legislature at each session of the condition of the State, and he may convene the legislature in special session when he deems it necessary. In most of the States the governor has a qualified veto, on the legislature, but in each instance a sufficient majority can pass a bill over his veto. The governor has power to grant pardons, except in cases of impeachment. His power of appointing other officers is not nearly so extensive as that of the President, as the more important State officers are elected.

Sec. 221. ASSISTANT EXECUTIVE OFFICERS.—In each of the States there are some or all of the following officers, who have under the Constitution an independent share in the executive function; a secretary of State, an auditor or comptroller, treasurer, attorney general, superintendent of schools, surveyor general, State printer and State librarian. These officers in most States are elected by the voters of the State; in some instances they are elected by the legislature, and in others part are appointed and part elected. They do not unite with the governor to form an executive unit, or cabinet; but each has duties to perform and is responsible to the people for the proper exercise of his office. In North Carolina a number of these officers, under the Constitution of 1868, formed

a "council of state" to advise the governor in the execution of his office. See Von Holst, *Const. Law*, 289n.

Sec. 222. THE STATE JUDICIARY.—The judicial power of the States is vested in a number of courts which are graded from a single Supreme Court, to a large number of inferior courts of limited jurisdiction. There is considerable diversity in the various States in the names of the courts and the jurisdiction granted them.* The following is a general summary of the courts usually found in the States: 1. A Supreme Court, consisting of from three to five judges, with original jurisdiction in a few instances, and appellate jurisdiction from the next lower courts. 2. Circuit Courts, varying in number, possessing some original jurisdiction and with appellate jurisdiction from the next lower courts. 3. Common Pleas Courts, which are held in each county several times during the year, with general jurisdiction and power of reviewing the action of the lowest courts. 4. Justices Courts; these latter are the lowest in the scale of jurisdiction and are limited to the trial of civil cases, in which but small amounts are involved, or where petty misdemeanors have been committed. 6. Probate Courts; these exist as county courts for hearing probate and testamentary matters; in some States they are called Orphans' Courts.

In the Code States all distinctions between common law and equity have been abolished, and the same

*The judicial department as organized in each State can be studied by the student from the Constitution and statutes of the State, which may be found in the office of any attorney.

courts that hear common law cases also hear and determine cases which demand so-called equitable relief. In the States which have not reformed their practice, courts of equity or chancery jurisdiction exist for the determining of cases necessitating equitable relief. The jurisdiction of these courts is determined by the rules of chancery law, and the method of procedure is quite distinct from that at law.

The Judges of the various State courts are as a rule elected by the voters of the State or district and hold for a term of years fixed by law. They are subject to impeachment the same as other civil officers, the judges of the higher courts receiving a salary, and justices of the peace being compensated by fees received and taxed as costs in each case.

Sec. 223. MINOR CIVIL DIVISIONS AND SELF-GOVERNMENT.—Every State is divided into counties (in Louisiana called parishes), and each county is divided into towns or townships. The origin of these minor civil divisions may be traced to the manner in which our country was settled. Small settlements united with others for protection, but reserved the exclusive management of all local matters. Thus from self-governing communities, States were formed, and the sovereign States in turn united to form the Federal Union. In this process of centralization regard was ever paid to the rights of the smallest local unit, and the right of the people to manage locally the matters which concern them alone has never been questioned

In each county officers are elected by the voters of

the county for carrying on the affairs of the county, as well as such matters pertaining to the State at large as must be conducted within the territory embraced by the county. These include, a board of commissioners, or supervisors, treasurer, recorder, sheriff, prosecuting or district attorney, coroner, surveyor, school superintendent, assessors and collectors of taxes. Some of these officers, though elected within the county, represent the State in exercising their office, while others simply represent the county.

Sec. 224. SAME SUBJECT—TOWNSHIPS.—Following out the policy of local self-government, officers are elected in each township to conduct the affairs of the State therein, and such local matters of government as demand the attention of the people. These officers are usually denominated as follows: Township trustees or selectmen, treasurer, clerk, supervisor of roads, overseers of the poor, constables, assessors and collectors of taxes.

Sec. 225. MUNICIPAL CORPORATIONS.—The people in the cities and villages of the States are either by general laws, or special grants, incorporated, that is, conjoined, and given a legal unity for certain purposes connected with their local government. Cities, villages, counties and townships as incorporations are called municipal or public corporations to distinguish them from corporations organized for business purposes. The grant of powers to incorporated cities and villages may include a vast range of powers, and establish almost a separate government. But in-

inhabitants are still subject to the general laws of the State, and the corporation may not exceed any of the powers granted it, and is ever subject to the paramount will of the State legislature, which, having granted the special power, has a like privilege of withdrawing it.

Sec. 226. TAXATION.—The State government, as well as the federal government, possesses the power of levying taxes upon the property or persons of its citizens or subjects. The taxing power of the State and federal government is concurrent, and each may levy its exactions upon the same person or property. But the perpetuity of an indissoluble union of indestructible States prevents either government from taxing the agencies or properties of the other, and the States are further forbidden to tax imports. So far the federal revenues have been derived chiefly from duties laid on imported articles, and on the manufacture and sale of tobaccoes and liquor, and in cases of greater necessity income and stamp taxes have been levied. The States have relied for their revenues upon taxes laid on the value of property. Both real and personal property are taxed, and every description of tangible and intangible property is sought to be reached. In many States the law provides for returns to be made by each citizen possessing property, stating under oath the kinds and values of his properties, and upon these returns, or the estimates of elected assessors, the taxes which each citizen is to pay is determined. Personal property where of small value is commonly exempted, and the properties of schools, churches, charitable institutions, etc., as well as all public property, are ex-

empted from taxation.* The collection of the assessed taxes is enforced by sale of the property, against which there is no exemption.

Sec. 227. EDUCATION.—In a country which recognizes the political equality of its citizens and aims to make the male portion of them participators in the government on attaining the age of majority, it is self-evident that the maintenance of a system of schools for the education of the coming citizens is a proper function of government. So far the extent to which the education of children in the free schools of the States has been carried has been quite limited. In the rural districts the common schools are usually ungraded and nothing but the primary branches are taught. In towns and cities the public schools are graded, and grammar and high school advantages are offered. In some of the States the books are furnished free, but in the majority the instruction alone is free. Normal schools have been established in a number of States for the better preparation of teachers for the common schools. These are assisted by the State, but in most instances a nominal charge is made for the instruction given.

The schools are supported by taxation and also by the proceeds from the funds which were given to each State by the federal government, and from the grants of public lands by the federal government for educational purposes. See Von Holst, *Const. Law*, 304-306.

Higher education is provided for in the States by establishing colleges and universities, which are sup-

ported in part by the State. Religious instruction is uniformly excluded from all public schools, from the lowest to the highest.—Von Holst, *Const. Hist.* IV., 91.

Sec. 228. PUBLIC INSTITUTIONS.—The State in protecting life and property and promoting the general welfare undertakes to provide for the incapable human beings who, by reason of disease or physical infirmities, are unable to care for and provide for themselves. It also provides for the incarceration of those who have committed crimes and forfeited their right to personal liberty. In taking care of these two classes of persons each State establishes and maintains charitable and penal institutions.

In a few States there exist public improvements which are owned and controlled by the State, such as canals and turnpikes. The ownership and management of these public utilities by the State has proven a great benefit to the people in furnishing ready and cheap transportation, and keeping these agencies open to the people without paying tribute to some private monopoly. It is now only a question of years until all so-called natural monopolies will have to be owned and operated by the State.

Sec. 229. POLICE POWER OF THE STATE.—It is within the province of government to preserve order, punish offenses, make regulations for the use and management of property that each may enjoy his own without infringing the rights of others, and the authority under which all these internal rules and regulations

for the peace and well-being of society are made is called the police power of the State. To prevent conflict of rights between man and man wherever or in whatever form they may arise is the duty of the sovereign power, and this branch of sovereignty is commonly called the police power.—License Cases, 5 How., 504; *Munn v. Illinois*, 94 U. S., 113.

The police power is the most comprehensive portion of sovereignty, it extends "to every person, every public and private right, everything in the nature of property, every relation in the State, in society, and in private life. The use of public highways is regulated under it; so are the public fisheries and mines, if any, and so are all the occupations of life. The domestic relations are formed, regulated, sustained, and dissolved under the rules it prescribes; the age at which a child becomes emancipated, the terms under which he may be allowed to apprentice himself or be forced by the public authorities to do so, and the measure of independent action in the marriage relation, are all determined by its rules. These rules seldom raise any question of constitutional authority, but it is possible for them to be pushed to an extreme that shall deny just liberty."—Cooley, *Principles*, 3d ed., 250-1; *Commonwealth v. Alger*, 7 Cush. (Mass.), 53; *Lawton v. Steele*, 152 U. S., 133.

The federal Constitution grants no police power to the general government, so that the power remains intact in the State, subject always to the prohibitions contained in the federal Constitution as regards ex post facto laws, the impairment of contracts, etc.

Sec. 230. SAME SUBJECT—TRADES AND OCCUPATIONS.—Every citizen has the right to engage in lawful business, and to choose the profession or business he will follow, but to a reasonable extent the State may regulate all trades and occupations. And in cases it is held that this power extends to prohibit callings considered injurious to the general public.—40 Ind., 312; 10 Mo., 591. The police power extends to prevent persons of one sex from engaging in occupations licensed by the State, as to forbid the employment of females in saloons. And the State may forbid persons under a certain age from engaging in a lawful occupation, as the employment of child labor in factories; and may regulate the number of hours per week which certain classes of persons may be employed.

Professions requiring special skill and training, and in which an unskilled person might cause damage and injury, are commonly regulated by the State. Thus the practice of law and medicine is limited in most States to those who, by a course of study and training evidenced by a diploma or ability to pass a prescribed examination, have fitted themselves to engage in these callings. The State may not discriminate in prescribing qualifications in favor of a particular school of medicine.

The police power has been extended to regulate the sales of dangerous, poisonous or explosive articles; to require the inspection of bread, flour, meat and other articles of general use.

Sec. 231. SAME SUBJECT—MONOPOLIES, TRUSTS, ETC.—At common law all combinations to

raise prices by engrossing and controlling the whole supply of a commodity were held to be unlawful and criminal. The formation of trusts and monopolies were treated as conspiracies.—6 E. & Bl., 47; Law Reports, 2 Q. B., 193. These principles of the common law are clearly in force in the various States and are applicable to the numerous trusts and monopolies which are designed to throttle individual enterprises. And it is within the police power of the States to punish or prohibit all contracts or organizations intended to stifle competition and arbitrarily raise the price of commodities through the instrumentality of a trust or monopoly or otherwise.—Texas & P. Ry. Co. v. Southern Pac. Ry. Co., 41 La. Ann., 970. In *Morris Run Coal Co. v. Barclay Coal Co.*, 68 Pa. St., 173, it is held that a “corner” or a confederation to control the price of articles of commerce, or to raise or lower the price of stocks, is a conspiracy. So in the case of *The Central Ohio Salt Co. v. Guthrie*, 35 Ohio St., 666, a combination of salt manufacturers to regulate the price and grade of salt, and forbidding each member to sell salt save at prices fixed by the company, was held illegal and void as in restraint of trade and against public policy.

The federal government, under its commerce power, has provided against carriers pooling freights, or dividing earnings and thus stifling competition; so by a recent decision of the Supreme Court the combination known as the Joint Traffic Association was declared void. And a federal law of 1890 declares all contracts, combinations or conspiracies in restraint of trade void,

and makes it a misdemeanor to thus monopolize or attempt to control trade or commerce among the several States or with foreign nations.*

At common law a combination to coerce an individual or company by refusing to work for, or to permit others to work for, such individual or company, commonly known as a boycott, is treated as a criminal conspiracy, for which the persons engaging therein may be indicted.—*Crump's Case*, 84 Va., 927. So all strikes and boycotts in which by violence, threats, or other coercive measures, the rights or property of others is endangered or trespassed upon, are promptly

*It will be seen from the text that the State has full legal authority to control trusts and monopolies, and the courts could easily put an end to their devastating career by the application of well-known and long-established judicial precedents. It may well be asked: Why has this not been done? And why do these illegal combinations exist on all hands? The true answer to these questions is to be found in the fact that corporate wealth has found means to subvert or prevent the enforcement of the laws that might prove hostile to its ambitious career. That this is the true reason why monopoly has not been restrained appears from the fact that the counter organization of the laboring classes, who by means of strikes and boycotts have sought, contrary to law, to secure their rights, have been quickly and effectually squelched by the courts. The principle in each case is exactly the same, the monopoly, by the use of lawless wealth and in violation of law and right, seeks to corner public necessities; strikers and boycotters, by means of mob force, would take the law in their own hands and commit breaches of the peace to secure their demands. Criminal conspiracy, injunction, and the military power of the State is as applicable to the one as the other. Corporate wealth has tampered with the scales of blind justice, or law and right would as quickly control the piratical trust as it has done the lawless mob.

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enjoined by the courts and the parties engaged therein are liable to indictment for criminal conspiracy.—*Rex v. Journeyman Tailors*, 8 Mod., 10; *State v. Donaldson*, 32 N. J. Law, 151.

Sec. 232. SAME SUBJECT—REAL PROPERTY.—The possession of real property by the citizens of a State is ever subject to the right of the State to take such portions of it as may be needed for the advancement of general welfare. The right of the State to take the property of citizens for public use is called the power of eminent domain. This power is not to be exercised arbitrarily, and is regulated by the Constitution, which usually provides the manner of taking, and that compensation shall be made.—*Pollard's Lessee v. Hagan*, 3 How., 212.*

Sec. 233. AMENDMENTS.—The State Constitutions provide the manner in which they may be amended or altered. They provide in every case that the amendment of the fundamental law shall be harder to accomplish than the enacting of an ordinary statute. Amendments after being adopted in convention or by the legislature are submitted to the people of the State to be ratified. In some States the Constitution provides that each twenty years the question, "Shall there be a convention to revise, alter, or amend the Constitution?" may be voted on by the electors of the State.

*This subject, as well as that of personal and religious liberty under the police power, will be taken up more fully in the next number of the Home Law School Series, under the subject of "Personal Rights."

This recognition of the power and right of the people to make over, from time to time, the fundamental law of their political organization, is the distinctive feature between free America and arbitrary, tyrannical Europe. Constitutions are never perfect. Government is a progressive science. The legislators of one era can at best but provide for the conditions in which they are placed. The development of new forces and instrumentalities, as well as the change in social conditions, requires like changes and development in the governmental system. The trust confided to the people to manage their common interests has never, in all the ages, been betrayed. Only when, by fraud and force, a few individuals have set themselves up as the possessors of the sovereign power has government become a curse rather than a blessing.

Our political organizations are characterized by the many restraints or checks imposed upon the organs of government. As stated by an early statesman,* the States are balanced against the general government; the Senate is a check upon the House, and vice versa; the three departments of the federal government are balanced; the executive is balanced against the legislative department; the Senate is balanced against the executive by its control over appointments and treaties, etc. But the final and most important check is the control which the people have retained of electing the officers and agents who exercise governmental authority, and of amending, altering, or abol-

*John Adams, Works, vi., 467.

ishing government, for the purpose of establishing others which more nearly satisfy their sovereign will.

Sec. 234. RULES OF CONSTRUCTION.—When the provisions of a Constitution are found to require construction in their application to concrete cases, the following rules are usually followed: 1. The meaning of the Constitution is always the same, and the construction should be uniform. 2. The entire instrument is to be considered in construing any part, and effect is to be given to the whole as well as each part. 3. It is the intent of the sovereign will that is to govern and this is to be found in the instrument itself.—Cooley, *Const. Lim.*, 6th ed., 60; *Beardstown v. Virginia*, 76 Ill., 34. 4. A State Constitution is to be construed in the light of the common law, as the common law is regarded as being in existence prior to the Constitution and as remaining afterwards, limited by such restrictions as the Constitution imposes—*State v. Noble*, 118 Ind., 350; *Mattox v. United States*, 156 U. S., 237. 5. The Constitutions as well as the statutes are considered as operating prospectively, and never retrospectively. 6. The grant of a general power carries by implication every special power necessary for its exercise. 7. When the terms of the Constitution cannot be made plain from a careful examination of the whole instrument, extrinsic aids may be resorted to, as a consideration of the object or purpose of the provision, the proceedings of the framers of the Constitution, and contemporaneous construction.—Cooley, *Principles*, 3d ed., 386-9; *United States v. Healy*, 160 U. S., 136; *Story, Const.*, Sec. 407.

Sec. 235. IN CONCLUSION.—In this chapter it has been taken for granted that the reader is an American citizen and acquainted more or less with the institutions of government which surround him, hence minute details have been avoided. Again, it is to be understood that this being a student's, and not a practitioner's compendium, many technical matters have not been adverted to at all. The important principles of Constitutional Law have been gone over as fully as the plan of the work as a student's and citizen's handbook would permit.

HELPS TO STUDENTS.

As suggested in "How to Study Law," the title of the first number of the Home Law School Series, a complete list of questions will be appended to each book of the series directing the attention of the student to the important points to be mastered. In the present number lists of questions given to graduating students of law colleges, and to students being examined for admission to the Ohio bar have been added. The purpose of these questions is to enable the student to judge if he has sufficient knowledge of the subject to pass the ordinary examination for admission to the bar.

In studying this subject we suggest that the student take up a single chapter at a time, having carefully read the chapter, examine the questions covering it and see that you have completely mastered all points. Where possible read other authorities and cases on the more important topics. When all the chapters have been thus considered, take a general review of the whole book, and then with some one to quiz you, take an oral examination on all the questions contained in this book. If your work has been reasonably thorough we will guarantee that you will be able to pass any fair bar examination on this subject.

Citations. A list of abbreviations used in citing authorities and cases is given in the front part of this

book; these may usually be found in any law dictionary. Cases are cited by giving the names of the parties, plaintiff and defendant, and the number of the volume, the name of the report or reporter, and the page on which the case begins, as *Martin v. Mott*, 12 Wheaton, 19. Formerly the reports were named after the individual who compiled them, now in most States and in the United States the reports of the Supreme Court are State reports or United States reports.

In the study of leading cases, which should be done as much as your time and facilities will permit, the following plan will prove helpful: 1. Get the nature of the action. 2. The essential facts of the case, in brief form. 3. The point or points in dispute. 4. The decision, or holding of the court, in a single word. 5. The grounds of the decision, or the reasoning of the court. This method of studying and analyzing leading cases is one recommended by the distinguished and well-known author of legal books, Melville M. Bigelow.

If the student following this course intends to become a practitioner it would be well for him to visit the office of any local attorney and get permission to use occasionally such books as the Statutes of the State, or legal dictionaries. In most cases your local attorney will be pleased to assist you in any reasonable manner.

Of the many valuable text-books on the subject of Constitutional Law we have cited but a few in these pages. Reference to these or any others will be found helpful. Students of the Home Law School are invited to write for any information they may require in this connection to the Principal, whose address will be found on another page.

QUESTIONS FOR STUDENTS.

The questions are numbered to correspond with the sections in this book. The answers and references for further study may be obtained by referring to the corresponding sections.

CHAPTER I.

51. What may be said as to the rapid development of the United States?

52. In whose possession did Columbus find the New World? What particular significance to the Old World did this discovery have?

53. What nations established colonies in America?

54. Describe the English colonies in America.

55. How and when was the first written Constitution adopted?

56. What was the New England Confederation?

57. What colonies had proprietary governments?

58. Explain, and distinguish between, Provincial, Charter and Proprietary government.

59. What were the grounds of dispute with England?

60. Describe the first attempt to unite the colonies.

61. Why was the attempt of Parliament to tax the colonies resisted?

62. When and why was the Colonial Congress called?

63. What taxes were levied upon the colonists after the repeal of the Stamp Act?

64. What was the date and purpose of the first Continental Congress?

65. Describe the circumstances under which the second Continental Congress met.

66. State all you can in regard to the adoption of the Declaration of Independence.

67. What may be said of the Declaration as fundamental law?

68. When and by whom were the Articles of Confederation adopted and ratified?

69. What sort of a union did the Articles form? What powers were given to the Congress?

70. Explain the defects in the Articles in respect to the formation of a practical central government.

71, 72. What attempts were made to revise the Articles of Confederation?

73. What was the purpose of the Philadelphia, or Constitutional Convention? When and for how long did it meet, and what may be said of its proceedings?

74. Describe the method by which the Constitution was ratified. When did it go into effect?

75. What may be said as to a bill of rights in the Constitution?

CHAPTER II.

76. Define and explain sovereignty.

77. In whom does sovereignty reside under our theory of government? How can you explain the existence of dual governments when sovereignty is indivisible?

78-80. Explain how sovereign States may associate, and define and distinguish between a confederation and a federal state.

81. Is the United States a federal state? Explain your answer.

82. What is a federal government?

83. Is the United States a federal government? Explain your answer.

84. Define a Constitution.

85. Define and explain written and unwritten Constitutions.

86. What may be said for and against written Constitutions?

87. Define Constitutional Law.

88. Explain the relation between the States and the United States as established by the Constitution. Which is the paramount authority?

89-91. Describe fully the usual construction of written Constitutions. What may be said as to the division of governmental powers between the three departments?

CHAPTER III.

92. Repeat the preamble. What is meant by a preamble?

93. What may be said as to "the people of the United States?"

94. What is the purpose of the Constitution as stated in the preamble?

95. Explain what is meant by a bicameral legislature.

96. What body possesses the legislative power of the United States?

97. By whom are the Representatives chosen?

98. How is it determined who shall vote for Representatives?

99. What are the qualifications for Representatives?

100, 101. Explain how Representatives are apportioned among the several States.

102. How is the basis of representation determined, and how often?

103. How are vacancies in the House filled? Why?

104. What may be said as to the powers of the Speaker of the House?

105. What is meant by impeachment, and what are the Constitutional provisions regarding impeachment?

106. How is representation in the Senate determined? Why? How often are they elected? Why?

107. What is the purpose of renewing the Senate in part each two years?

108. How are vacancies in the Senate filled?

109. What are the qualifications of Senators?
110. Who presides over the Senate?
111. What may be said as to the organization of the Senate?
112. What power has the Senate over impeachments?
113. What is the constitutional provision in regard to federal elections, and what action has Congress taken thereunder?
114. How often does Congress meet? What is meant by "a Congress?"
115. Give the provisions of Art. I., Sec. 5, cl. 1. What is meant by a quorum?
- 116-118. What power to establish rules of procedure and punish members is given to the two houses?
119. What provision is made for preserving a record of legislative proceedings?
120. When may the yeas and nays be entered on the journal?
121. How are the two houses made dependent on each other?
122. What provision is made for paying the federal legislators?
- 123, 124. What is the purpose of members being privileged from arrest, and from being questioned for any speech or debate in the houses?
125. Explain the purpose of cl. 2 of Art. I., Sec. 6.
126. Where must all revenue measures originate? Explain why.
- 127, 128. Describe the mode of passing laws.
- 129, 130. What is meant by the veto power? What is the nature of the power as granted to the President? What measures may be vetoed?

CHAPTER IV.

131. Explain how a grant of powers to Congress is also a grant to the other departments.
132. Explain fully what is meant by exclusive and concurrent powers.

133, 134. Give the clause conferring the federal taxing power. In what respects is the power limited? What may be said in regard to the punctuation of the clause?

135. What are the limitations as to the purpose of the tax?

136, 137. What are the limitations as respects the manner of taxing? What are direct taxes? What is the limitation in regard to direct taxes? Describe the change in the construction of the phrase "direct taxes." Is an income tax a direct tax? Give reason for your answer.

138. Can the States tax federal agencies? Explain fully and give the leading case.

139, 140. What is the extent of the power to borrow money? Explain the history and present status of legal tender paper money.

141. What are the express restrictions on the commerce power?

142. What is meant by regulating commerce? Does this power extend to developed agencies of communication and transportation?

143. When is the commerce power exclusive, and when concurrent?

144. To what extent may the regulation of commerce with foreign nations be carried?

145, 146. Explain the federal power over commerce between States, and discuss the leading cases. What was the decision in the "original package" cases?

147, 148. In what way have the States an indirect power to regulate interstate commerce? Name some valid regulations by the States. Name some cases to which the police power does not extend.

149. Explain the nature and purpose of the federal Interstate Commerce Act.

150. To what extent may Congress control commerce with the Indians?

151. What power has Congress over naturalization? What is meant by naturalization?

152. What regulation has Congress made in regard to naturalization?

153. What power has Congress over bankruptcies? What is the nature of the bankruptcy law now in force?

154. What is meant by coining money? Where does the power to coin money reside? Describe fully what action Congress has taken under the power.

155, 156. What power has Congress over weights and measures? Over counterfeiting?

157. Describe and discuss the nature of the federal power over postoffices and postroads.

158. Give the clause under which patents and copyrights are protected. Define a patent, a copyright, a trademark.

159. Define piracy. What is meant by the high seas? What is meant by offenses against the law of nations?

160. Define war. What is the war and military power of Congress? Explain letters of marque and reprisal.

161. What restriction is placed on the power to raise and support armies?

162. What is meant by the militia? In what cases may they be employed? Describe the organization of the militia.

163. What power has Congress over ceded districts? Discuss the status of the inhabitants of such districts.

164. Give the clause on which the implied powers are based. Describe fully the construction given this clause and the leading cases.

CHAPTER V.

165. What compromise was made in regard to the importation of slaves?

166. Explain the purpose of the writ of habeas corpus. When and by whom may the privilege of the writ be suspended?

167. What is meant by a bill of attainder? Why are they prohibited?

168. Discuss ex post facto laws and give instances of what are ex post facto laws.

169. How may money be drawn from the treasury of the United States?

170. What provision in the Constitution regarding titles of nobility?

171. What powers are denied the States by Sec. 10 of Art. I.? What are bills of credit?

172. What contracts are affected by the provision against the impairing of the obligation of contracts? What was the effect of the decision in the Dartmouth College Case? Give some principles modifying that doctrine. What is meant by obligation of a contract?

173. Specify legislation that would impair the obligation of contracts. Distinguish between the impairing of the obligation and impairing the remedy for a breach of contract.

174. What is meant by tonnage duty? How and why are the States restricted in this regard?

175. Name some of the implied restrictions on legislative power.

CHAPTER VI.

176. What dispute arose in the Convention over the term of the President?

177. Explain how the President was to be elected indirectly. What change was made by the XIIth Amendment in the election of President and Vice President?

178. Discuss the power of the President as Commander-in-chief. What is meant by "the Cabinet?" Discuss the pardoning power.

179. What are treaties, and what power has the President in making them?

180. What appointing power has the executive?

181. Discuss the duties of the President.

182. What officers are subject to impeachment and for what offenses?

CHAPTER VII.

183. What may be said of the judiciary as a department of government? What peculiar power have the courts as-

sumed in interpreting the Constitution? Give the rules followed in making decisions on constitutional questions. Give the rules of interpretation.

184. Give the Constitutional provision respecting the vesting of the judicial power in the courts. Describe the federal courts as established by Congress.

185. Describe each of the nine classes of cases in which the federal courts are given jurisdiction by the Constitution. Why was the Eleventh Amendment necessary?

186. Discuss what law is applied in decisions by the federal courts.

187. What is meant by original jurisdiction? By appellate jurisdiction? In what cases has the Supreme Court original jurisdiction? How is the appellate jurisdiction of the federal courts fixed?

188. Over what classes of cases have the federal courts been given exclusive jurisdiction? Concurrent jurisdiction?

189. What federal courts may issue the writ of habeas corpus?

190. How are crimes to be tried? What exception? What is meant by jury trial?

191. Define treason. What is meant by constructive treason? Why has treason been defined and Congress limited in punishing it?

CHAPTER VIII.

192. In what respects does the Constitution seek to nationalize the people?

193. Explain what is meant by "full faith and credit." How may the judgment of the court of another State be defeated? How are public acts authenticated?

194. Describe what is meant by and included in the privileges and immunities to which the citizens of the several States are entitled.

195. What is meant by extradition? In what cases and under what conditions may a person be extradited?

196. What Constitutional provision is made for the admission of new States?

197, 198. Give the provision of Sec. 4, Art. IV., and explain what is meant by a republican government. When are the States to be protected against domestic violence?

199. How may the Constitution be amended?

200. Give the provisions of Art. VI. of the Constitution. Why are test oaths forbidden?

CHAPTER IX.

201. How were the amendments adopted? What is the purpose of the first ten? Of the last three?

202. Discuss the freedom of religion, of speech and of the press.

203. Give and discuss the second and third amendments.

204. What are the provisions in regard to search warrants?

205. Discuss the provisions of the fifth amendment.

206. Give the provisions of the sixth amendment.

207, 208. Give and describe the seventh and eighth amendments.

209. Do the first eight amendments limit the authority of the States?

210. Discuss the ninth and tenth amendments.

211. When was the thirteenth amendment adopted and what was its purpose?

212. What is the purpose of the fourteenth amendment? What, if any, difference is made in regard to United States citizenship by this amendment? Does it change the federal character of the Union?

213. In what way does the fifteenth amendment restrict the States? Is any one given the right to vote by this amendment?

CHAPTER X.

214. What is the basis of the government of the States?

215. Discuss the makeup of State Constitutions.

216. Describe the legislature in your own State, and give the qualifications and terms of office of members.

217. What distinction between the Constitutions of the States and of the United States in respect to granting powers? How is the legislative authority of the States regulated? Discuss fully.

218. What may be said in regard to limiting or expanding the sphere of governmental activity?

219. Discuss the executive department in State government.

220. Describe the powers and duties of the governor in your State.

221. Name the assistant executive officers in your State and specify whether they are elected or appointed.

222. Describe fully the courts of your State and explain the jurisdiction granted to each. What distinction, if any, exists between common law and equity in your State?

223, 224. Describe the minor civil divisions of your State.

225. What is meant by a municipal corporation? How are they incorporated in your State?

226. What may be said of the taxing power of the States?

227. Explain the organization of the schools in your State.

228. What penal and charitable institutions are supported by your State? What public works, if any?

229-232. Define and discuss fully the police power of the States. How might trusts and monopolies be restrained?

233. How may the Constitution of your State be amended? What are some of the checks and balances in our system of government?

234. Give seven rules in the construction of Constitutions.

235. What other books have you read in preparing this subject?

Questions given the graduating classes of Cincinnati Law College in 1884 and 1885:

1884.

1. What is an *ex post facto* law, and what is a law impairing the obligation of contracts? Give an example or examples of each.

2. Suppose a statute of the Legislature of Ohio, declaring that any one guilty of the crime of murder should forfeit his estate, and that he could neither inherit nor transmit any property thereafter, would this be a valid statute? Give reason for your opinion.

3. What is meant by the term "due process of law?"

4. What is meant by the term "police power of the State?" To what subjects does it extend?

1885.

1. What courts, if any, can try cases affecting foreign ambassadors resident in the United States?

2. What penalties are authorized in cases of impeachment under the Constitution of the United States, and also under the Constitution of the State of Ohio?

3. If certain legislation is not authorized directly or by implication, either by the Constitution of the United States or of the State, but it is prohibited by neither, would it be valid if enacted by Congress, or by the State Legislature?

Questions on the subjects of "Constitution of the United States" and "Constitution of Ohio" for admission to the Ohio Bar, March, 1896.

CONSTITUTION OF THE UNITED STATES.

1. What are the objects to be attained in ordaining and establishing the Constitution for the United States of America, as expressed in the preamble?

2. Name the three great powers of the government of the United States, and in what departments of the government does the Constitution repose the exercise of each?

3. What was the object of giving representation in the House of Representatives to the several States in proportion to population and of giving each State equal representation in the Senate?

4. In which branch of Congress must all revenue bills originate, and why?

5. What do you understand by the terms "enumerated" and "implied powers," as applied to the Constitution?

CONSTITUTION OF OHIO.

1. In what criminal offenses may the person accused be admitted to bail?
2. What power of suspending laws is conferred by the Constitution of Ohio, and by whom shall it be exercised?
3. In what courts is the judicial power of the State vested?
4. In what cases has the Supreme Court original jurisdiction?
5. What jurisdiction does the Constitution confer upon the Court of Common Pleas?



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